



TO COUNCILLOR:

L A Bentley (Chair)
G A Boulter
Mrs L M Broadley (Vice-Chair)
F S Broadley

D M Carter
B Dave
D A Gamble
J Kaufman

Mrs L Kaufman
Dr T K Khong
Mrs H E Loydall
R E R Morris

Dear Sir or Madam

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, 30 AUGUST 2018** at **7.00 PM** for the transaction of the business set out in the Agenda below.

Yours faithfully

Council Offices
Wigston
17 August 2018

Mrs Anne E Court
Chief Executive

<u>ITEM NO.</u>	<u>AGENDA</u>	<u>PAGE NO'S</u>
1.	Apologies for Absence	
2.	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'.	
3.	Minutes of the Previous Meeting held on 26 July 2018	1 - 10
	To read, confirm and sign the minutes of the previous meeting in accordance with Rule 17 of Part 4 of the Constitution.	
4.	Action List Arising from the Policy, Finance & Development Committee Meeting held on 17 July 2019	11
5.	Petitions and Deputations	
	To receive any Petitions and, or, Deputations in accordance with Rule 24 of Part 4 of the Constitution.	
6.	Confirmation of The Borough Council of Oadby & Wigston Tree Preservation Order(s) (TPO's)	
	Report(s) of the Arboricultural Officer	



a) The Yews, Oadby (TPO/0324/GROUP)	12 - 30
b) Wigston Delivery Office (TPO/0328/TREE)	31 - 37
c) Land at 14 Granville Avenue, Oadby (TPO/0329/TREE)	38 - 44
d) Land at 98 Saffron Road, Wigston (TPO/0330/TREE) (TPO/0314/TREE)	45 - 65
e) Land at 19 Healey Street, Wigston (TPO/0332/TREE)	66 - 72
f) Land at 45 Woodfield Road, Oadby (TPO/0333/TREE)	73 - 79
7. Report of the Planning Control Team Leader	80 - 104

In accordance with Rule 14.1 of Part 4 of the Constitution, a motion needs to be proposed and seconded before the Committee can debate a planning application. This is an administrative process designed to assist the Chair to manage the meeting effectively and efficiently. This is not an indication of how the proposer and seconder intend to cast their votes at the conclusion of the debate. Members can only make a decision once they have considered the content of the debate and all of the information in front of them.

- a) **Application No. 18/00279/FUL - 34 High Leys Drive, Oadby, Leicestershire, LE2 5TL**
- b) **Application No. 18/00284/FUL - 36 Marstown Avenue, Wigston, Leicestershire, LE18 4UH**
- c) **Application No. 18/00317/FUL - Pavilion, Horsewell Lane, Wigston, Leicestershire**

8. Tree Preservation Orders and Compensation: Current Legal Position (Verbal Update)	105 - 108
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Verbal update of the Head of Law & Governance / Monitoring Officer

For more information, please contact:

Planning Control
Oadby and Wigston Borough Council
Council Offices
Station Road, Wigston
Leicestershire
LE18 2DR

t: (0116) 288 8961
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Agenda Item 3

**MINUTES OF THE MEETING OF THE DEVELOPMENT CONTROL COMMITTEE HELD AT THE
COUNCIL OFFICES, STATION ROAD, WIGSTON ON THURSDAY, 26 JULY 2018
COMMENCING AT 7.00 PM**

PRESENT

Councillor L A Bentley (Chair)

COUNCILLORS

G A Boulter
F S Broadley
B Dave
D A Gamble
Dr T K Khong
Mrs H E Loydall
R E R Morris

OFFICERS IN ATTENDANCE

S J Ball (Senior Democratic Services Officer / Legal Officer)
D M Gill (Head of Law & Governance / Monitoring Officer)
R Redford (Planning Control Team Leader)

OTHERS IN ATTENDANCE

M Chenery (Public Speaker)
T Coleman (Public Speaker)
N Hardy (Spokesperson, Speaker)

14. APOLOGIES FOR ABSENCE

An apology for absence was received from Councillors Mrs L M Broadley, D M Carter, J Kaufman and Mrs L Kaufman.

15. DECLARATIONS OF INTEREST

None.

16. MINUTES OF THE PREVIOUS MEETING HELD ON 28 JUNE 2018

By affirmation of the meeting, it was

UNANIMOUSLY RESOLVED THAT:

The minutes of the previous meeting of the Committee held on 28 June 2018 be taken as read, confirmed and signed.

17. PETITIONS AND DEPUTATIONS

None.

18. REPORT OF THE PLANNING CONTROL TEAM LEADER

18a. APPLICATION NO. 18/00191/FUL - 39 WHITEOAKS ROAD, OADBY, LEICESTERSHIRE, LE2 5YL

Mr T Coleman spoke upon the application as an objector. A copy of the objector's representations is filed together with these minutes at **Annex A**.

The Committee gave consideration to the report (at pages 5 - 12) as delivered and summarised by the Planning Control Team Leader which should be read together with these minutes as a composite document. It was reported that an updated petition objecting to the application had been received with additional signatories.

A debate thereon was had whereby Members acknowledged that the application was open to a subjective interpretation in terms of its perceived appearance within the existing street-scene by virtue of the fact that the existing dwelling occupied a corner plot on both sides of Whiteoaks Road and Glenway. Whilst most Members considered that the existing dwelling was defined by its address at Whiteoaks Road, and therefore ought to be seen as part of that street scene context, comprising of one-story dwelling, it was accepted that, in the absence of any specific planning policy restricting the conversion of bungalows, any refusal on the grounds of it being "out of character" alone would not be sufficiently robust to challenge on any appeal.

In reaching its decision, the Committee was advised that given the duality of the two street scene contexts and the unique corner plot siting, if Members were minded to grant permission, a precedent in favour of bungalow conversions along Whiteoaks Road would not be established. In view of other concerns having been raised by Members, the Committee was also advised that, in order to soften the visual bulk of the proposed development, an additional landscaping condition could be attached.

It was moved by Councillor Mrs H E Loydall, seconded by Councillor R E R Morris and

UNANIMOUSLY RESOLVED THAT:

An additional condition be attached requiring a detailed scheme of landscaping and measures for the protection of trees to be retained during the course of development to be submitted to and approved prior to the commencement of development.

It was moved by the Chair, seconded by Councillor R E R Morris and

RESOLVED THAT:

The application be GRANTED planning permission in accordance with the submitted documents and plans and subject to the prescribed conditions (as amended).

Votes For	6
Votes Against	1
Abstentions	1

18b. APPLICATION NO. 18/00230/REM - HM YOUNG OFFENDERS INSTITUTE GLEN PARVA, TIGERS ROAD, WIGSTON, LEICESTERSHIRE, LE18 4TN

Mr N Hardy, spokesperson for the Ministry of Justice, spoke upon the application on behalf of the applicant. A copy of the spokesperson's representations is filed together with these minutes at **Annex B**.

Mr M Chenery spoke upon the application on behalf of those residents living in the immediate private-estate adjacent to the application site as an objector. A copy of the

objector's representations is filed together with these minutes at **Annex C**.

The Committee gave consideration to the report (at pages 13 - 25) as delivered and summarised by the Planning Control Team Leader which should be read together with these minutes as a composite document. It was reported that two additional letters of representation objecting to the application had been received citing similar concerns as those already summarised within the body of the report (as page 17).

A debate thereon was had whereby Members emphasised that their primary duty was to safeguard the amenity and wellbeing of those affected residents as far as it was within their power to do so. In particular, the Committee stated that the treatment along the site's eastern boundary required: a wall of suitable design and material to effectively and securely separate the application and neighbouring sites; the internal planting of mature trees to provide an immediate visual-acoustic barrier; and arrangements in place for the ongoing maintenance of other soft landscaping features. In relation to the site's external lighting and CCTV arrangements, it requested that Ward Members be consulted on the same prior to their approval.

In reaching its decision, the Committee was assured that conditions 6 and 7 of the original outline permission would be properly discharged by Officers, with the benefit of their professional-technical aptitude, to ensure that the interests of the site's security and the residential and visual amenity of the area would be fully met and protected. Members were advised that any proposed CCTV coverage onto private-residential property would not be complaint with the recently-implemented General Data Protection Regulation (GDPR). In respect of the various requests made by the objector, the Committee was advised that the majority of the matters referred to were not capable of being conditioned or acted upon insofar as they either fell outside the scope of the defined application site or the Council's general remit of responsibility.

It was moved by the Chair, seconded by the Councillor D A Gamble and

UNANIMOUSLY RESOLVED THAT:

- (i) The conditions (as set out in the report) be discharged; and**
- (ii) The additional condition and informatives (as set out in the report) be attached.**

THE MEETING CLOSED AT 8.26 PM



Chair

Thursday, 30 August 2018

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Council Offices, Station Road, Wigston, Leicestershire, LE18 2DR*

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Application No. 18/00191/FUL
39 Whiteoaks Road, Oadby, Leicestershire, LE2 5YL

Objector's Representations - Mr T Coleman

I am of the opinion that this extension should NOT go ahead as proposed by adding a second storey.

I and my family are probably the residents of Whiteoaks Rd who have been there the longest having bought our 3 bedroom Bungalow in 1962, during this time we decided to extend the accommodation (having 3 children) to include an upper floor with a ridged roof at right angles to our main ridge roof and above our current flat roof, this application was turned down and we settled to extend only at ground level.

The reason given for the refusal was that such an extension would detract from the current low level attractive aspect of Whiteoaks Rd. and could lead to similar piecemeal changes in the road.

As with this application it would certainly have set a precedent for any future second storey applications along Whiteoaks Rd. which as with this current case will be difficult to refuse should this application go ahead.

On a broader scale there is development of 170 houses to be built beyond Whiteoaks Rd with access via the A6, no bungalows are included because these it seems are uneconomical for the builder, and I believe this is also applicable to other developments in the area including Newton Lane and Cooks Lane.

Yet there is a need for bungalows, for various disabled and elderly people to whom a staircase is a hazard or even impossibility and we are aging population which suggests that as no more bungalows appear to be being built the demand for them is going to rise. So I see no reason why the Council would allow a perfectly sound 3 bed bungalow to be converted into property with a second storey and stairs.

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Application No. 18/00230/REM

HM Young Offenders Institute Glen Parva, Tigers Road, Wigston, Leicestershire, LE18 4TN

Objector's Representations - Mr M Chenery

Good evening, my name is Mark Chenery, and I have lived on the old crown estate, on and off for the last 25 years. I would like to thank the committee for this opportunity to speak in regards to the Prison Development on behalf of myself, and my neighbours (some of whom unfortunately couldn't make it this evening).

Firstly I would like to say that none of the neighbours I have spoken to, has objections to the prison being re-built in its current location, and we have conducted ourselves calmly and politely at the numerous meetings we have attended, when speaking with the Ministry of Justice (MoJ) representatives, and I'm sure Nick Hardy would happily back us up.

As a resident who lives right at the end of Crete Avenue, my property is immediately bordered by Ministry of Justice (Crown) land. I would like to state for the benefit of this committee tonight that I do not regard them as 'good neighbours', and as such I would like to explain my reasoning behind this statement.

They have no regard for us as their neighbours and they do not maintain the grass verges, trees or street lighting outside of the boundary fence. My neighbour mows the grass to make our local area look respectable and we swap the lightbulbs, (with ladders) in the streetlamps to maintain a bit of light in the night, but currently all four streetlights are faulty. This presents us with a security risk, especially in the winter. We would like assurances from Oadby and Wigston Council that this situation will not be allowed to continue as it has been.

At the consultation meeting held in April, I spoke to Duncan DeBoltz of the MoJ estates team, and he told me that Blaby Council and the MoJ had agreed a deal, where Blaby have taken on the responsibility of the lighting for the ex-prison quarters sold off at around the same time as the ones on Crete Avenue were, however he wouldn't tell me what that deal was.

Whilst we acknowledge that this is documented in Planning Statement that has been submitted, we are residents within the Oadby and Wigston Council boundary and we want you to have no doubt about our requests to the MoJ:

- New Fence (at end of Crete Avenue) - we would like the new 2.4m boundary fence to be of a solid, smooth, non-reflective construction to protect our privacy, it would reduce carpark noise and is in keeping with our residential area. This fence needs to provide security both for us residents & the carpark (We don't want a shiny mesh industrial looking fence!);
- My neighbour (Mrs Sutton) who lives at 35 Crete Avenue, would like the new perimeter fence moving back slightly to allow shrub planting between the road and the new fence. On the current plan the new fence cuts across the road;
- Lighting - Whilst we have no lighting at the moment we do not want to be looking from our bedroom windows at a wall of bright white light aiming down at the

carparks. There is no mention of lighting on these current plans, and we are concerned about this and want to know what is planned;

- Lighting (Crete Avenue) - We would like street lighting that works and have the contact details of who to report it to when it doesn't;
- Noise - we'd like suitable noise screening (preferably native trees) to provide some additional protection for myself and my neighbours who live on Hindoostan Avenue which will be adjacent to the new visitor's car park;
- Planting (external to the perimeter fence) - We would like the planting to be in keeping with our estate and to be of native British shrubs and trees.
- Planting (external to the perimeter fence) - We'd like some assurances that these new trees will be maintained in a suitable manner, as and when the internal trees are maintained.
- Grass (external to the fence) - we note that there is a lot of grassed areas in the car park areas, we'd like the grass on the external area to the fence to be included when the carpark grass is cut.
- Parking - While the MoJ has stated in the Planning Statement that they will discourage parking on Crete Avenue, we still haven't been consulted how they plan to do that.

I'm sure that you will all agree our requests are not unreasonable and thank you all again for being able to be able to speak on behalf of myself and my neighbours.

Application No. 18/00230/REM

HM Young Offenders Institute Glen Parva, Tigers Road, Wigston, Leicestershire, LE18 4TN

Spokesperson's Representations - Mr N Hardy (Ministry of Justice)

When I spoke to this Committee in June 2017 it was in support of the Outline Application for redevelopment of the site. The Outline Application was supported by a Masterplan which showed how the Ministry of Justice (MoJ) thought the site might be developed.

However, the external appearance of all of the buildings, the layout of the site, and landscaping were reserved for later approval. Since then: the design of the buildings has changed with a focus on ensuring the best possible relationship between new buildings and existing housing; the zoning of uses, and the location of staff and visitor parking, hasn't changed, but the detailed siting of buildings has, to be sensitive to uses across boundaries; opportunities for landscaping have been maximised; and all of these things have been presented in the Reserved Matters Applications.

Two of the Reserved Matters were approved at the Outline stage. The first was the scale of the development, or the maximum amount of floorspace allowed, and the maximum height of buildings. The second was means of access to the site - and the outline permissions granted by Blaby District and this Council confirm that: (a) the only access during construction and when operational will be from Tigers Road; and (b) there will be no access whatsoever (vehicular or pedestrian) from Crete Avenue.

Planning process meant that we submitted identical outline applications to both Councils - and requires that we submit identical Reserved Matters Applications to both Councils.

However, the report makes it clear that the issues for this Council to consider are narrow. This is for two reasons. First, whilst access from Tigers Road is a key part of the development, and is in Oadby and Wigston, that was approved at outline stage and is not for consideration again. Second, only a very small part of the site is in Oadby and Wigston, and none of the new buildings. The only elements in Oadby and Wigston are landscaping, a small section of road that serves the visitor parking and entry building, and the eastern boundary including alongside Crete Avenue.

We arranged an exhibition before the Outline Application was submitted - and a second before the Reserved Matters were submitted. The comments made by residents of Oadby and Wigston were consistent at both events, and are raised in the letters of objection referred to in the report. They focus on one key issue (apart from traffic) which is the concern about possible on street parking (staff and visitors) in Crete Avenue and Hindoostan Avenue.

The concern is that when the 5.2m fence is removed there is a risk that staff and visitors will park in the estate, rather than at the prison car parks. The MoJ and Interserve fully understand the reasons for resident's concerns. The Planning Statements submitted with the Outline and reserved matters applications confirm that: the proposals include about 420 parking spaces which is enough to support all staff and visitor needs, so there will be no need for staff or visitors to park in the estate; and the Applicants agree that the long term boundary treatment here should be impermeable so that if anyone did consider parking in

the estate they would be put off because they would have to walk a considerable distance via Saffron Road/Tigers Road.

We encouraged the Council to add conditions relating to boundary treatments. Condition 25 requires that the existing boundary treatment stays in place during demolition and construction. The recent application to partially discharge this condition confirms that the 5.2m fence and 2.4m concrete wall will remain throughout demolition and construction.

Condition 6 requires that the applicant agrees a new boundary treatment before implementation which will be installed before the new prison is occupied. A proposal will be put forward for consideration when an application to fully discharge Condition 6 is made - but there is no requirement for that as part of the Reserved Matters Applications.

We have indicated that the proposal is likely to be for a 2.4m high fence - which seems to be what residents would prefer - which will be impermeable and with materials to be agreed.

I agree also with the extra condition which Officers are proposing which requires details of how the new boundary treatment will tie into retained fences.

In summary, and as Officers have said, the issues for consideration by this Committee are narrow, with access having been approved and with all new built development being in Blaby. Even though they are narrow, they are important, and will be fully addressed by later submissions in relation to Condition 6.

POLICY, FINANCE AND DEVELOPMENT COMMITTEE

ACTION LIST (EXTRACT)

Arising from the Meeting held on Tuesday, 24 July 2018

No.	Minute Reference / Item of Business	*Details of Action <i>Action Due Date</i>	Responsible Officer(s)' Initials	Status / Update
2.	10. Provisional Council Outturn (2017/18)	With regard to the £42,000 compensation payment made by the Council concerning a tree preservation order, produce a report for the Development Control Committee advising Members on the current legal position and best practice regarding cases of this nature. <i>Due by Aug-18</i>	AT DG MB	Complete (See Below)
		A briefing note was circulated to Members on 13 August 2018. A verbal update will be provided at agenda item 8.		

* | All actions listed are those which are informally raised by Members during the course of debate upon a given item of business which do not form part of - but may be additional, incidental or ancillary to - any motion(s) carried. These actions are for the attention of the responsible Officer(s).

Agenda Item 6a



Development Control Committee	Thursday, 30 August 2018	Matter for Decision
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Report Title: **The Borough of Oadby and Wigston (The Yews, Oadby) Tree Preservation Order 2018**

Report Author(s): **Michael Bennetto (Arboricultural Officer)**

Purpose of Report:	The purpose of this report is to seek a decision from the Committee to confirm or otherwise The Borough of Oadby and Wigston (The Yews, Oadby) Tree Preservation Order 2018 ("the Order") which was made on the 10 May 2018.
Report Summary:	The Order was created following the request of Leicestershire County Council, that the old County Council Area Tree Preservation Orders (TPO's) be brought up to date with new Oadby and Wigston Borough Council (OWBC) Orders. Some modifications to the Order are required,, including a decision on the inclusion of tree T4.
Recommendation(s):	That The Borough of Oadby and Wigston (The Yews, Oadby) Tree Preservation Order 2018 be confirmed with modifications.
Responsible Strategic Director, Head of Service and Officer Contact(s):	<p>Anne Court (Chief Executive) (0116) 257 2606 anne.court1@oadby-wigston.gov.uk</p> <p>Adrian Thorpe (Head of Planning, Development and Regeneration) (0116) 257 2645 adrian.thorpe@oadby-wigston.gov.uk</p> <p>Michael Bennetto (Arboricultural Officer) (0116) 257 2697 michael.bennetto@oadby-wigston.gov.uk</p>
Corporate Priorities:	Balanced Economic Development (CP3) Green & Safe Places (CP4) Wellbeing for All (CP5)
Vision and Values:	Accountability (V1) Customer Focus (V5)
Report Implications:-	
Legal:	All legal requirements have been fulfilled and interested parties are to be informed of confirmation as soon as reasonably practicable.
Financial:	There are no implications directly arising from this report.
Corporate Risk Management:	No corporate risk(s) identified.
Equalities and Equalities Assessment (EA):	There are no implications arising from this report. EA not applicable.

Human Rights:	There may be implications under Articles 1 and 8 of the Protocol No. 1 to the European Convention on Human Rights regarding the right of respect for the peaceful enjoyment of possessions and a person's private and family life and home. However, these issues have been taken into account in the determination of this Order.
Health and Safety:	There are no implications arising from this report.
Statutory Officers' Comments:-	
Head of Paid Service:	The report is satisfactory.
Chief Finance Officer:	The report is satisfactory.
Monitoring Officer:	The report is satisfactory.
Consultees:	All persons interested in the land affected by the Order.
Background Papers:	Town and Country Planning Act 1990 Part VIII, Chapter I, Trees The Town and Country Planning (Tree Preservation)(England) Regulations 2012 Human Rights Act 1998 Protocol No. 1 to the European Convention on Human Rights
Appendices:	1. TPO - The Yews, Oadby (Provisional) 2. TPO - The Yews, Oadby (County Council) 1972

1. Information

- 1.1 The Order was created following the request of the Leicestershire County Council's Landscape Officer, Andrew Shaw, that the old County Council Area TPO's be brought up to date with new OWBC Orders.
- 1.2 A site visit was carried out to assess the County Council TPO review. A provisional TPO was made on 10 May 2018. In compliance with the 2012 Regulations, copies of the Order were served on the owners of the property and adjoining neighbours on 10 May 2018. The cover provided by the new TPO is much the same as before: trees and groups have been mapped appropriately and some trees not protected by the County Order have been added.

2. Objections

- 2.1 One objection has been received. Mr and Mrs Neuborn of 6 Harvard Close object to the inclusion of a Blue Colorado Spruce (T4 of the provisional order) on their property on the grounds that:
- The property was present before the tree was planted;
 - The tree does not provide a reasonable degree of public benefit in the present or future;
 - It is not expedient to protect the tree as it is well managed; and
 - They do not consider that the Council have the authority to subject their possession to our control in accordance with the TCPA 1990 and the Human Rights Act 1998.

2.2 Officer's comments

- (i) It is noted that this tree was planted after the house was constructed; it is neither a requirement nor recommendation that trees must pre-date associated/adjacent development to be able to be protected. It does appear that the adjacent Sorbus was

planted as part of the developments associated landscaping. If the owner is concerned about the possibility of structural damage, should any structural damage arise the trees removal should be permitted, it is the presence of a feature tree in this prominent location that is important.

- (ii) This is a prominent corner of the cul-de-sac; many people use this road for parking to collect their children from the adjacent school. As trees covered by the 1972 County Order age it is important to consider assets with good future potential when updating TPO's. This tree is well-positioned and ornamental, acting to soften the landscape.
- (iii) It is not often the case that changes in ownership and intention to fell trees are known in advance, as such a precautionary approach to tree protection is permissible.
- (iv) The power to make a TPO is found in section 198(1) of the Town and County Planning Act 1990 which provides:
 - (a) "If it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order."
 - (b) The Human Rights Act 1998 is not contravened if any such limitations are covered by law (as above), carried out lawfully and in the public interest.

3. Modifications

- 3.1 With regard to group G6, it was noted by a resident that within the Schedule, no. 18 The Yews was omitted. It is therefore recommended to amend the Schedule to reflect this.
- 3.2 Contrary to H M Land Registry records, it was noted by Leicester County Highways and confirmed by the Highways Records Department that part of G3 is adopted. It is therefore recommended to modify the TPO accordingly to exclude the highways trees. G3 is therefore smaller and contains 3 trees.

4. Conclusions and Recommendation

- 4.1 The trees protected by the Order are primarily the same trees as covered by the old Area Order with the inclusion of some younger trees of amenity value.
- 4.2 In line with TEMPO (Tree Evaluation Method for Preservation Orders), the tree T4 is on the boundary of defendable. It is for Members to consider if it is expedient to include T4 in the Order.
- 4.3 It is recommended that the Order be confirmed subject to the modifications as set out above and the consideration of the inclusion of T4.

Town and Country Planning Act 1990

The Borough Council of Oadby & Wigston (The Yews, Oadby) Tree Preservation Order 2018

The Borough Council of Oadby & Wigston, in exercise of the powers conferred on them by sections 198 of the Town and Country Planning Act 1990 hereby make the following Order:-

Citation

1. This Order may be cited as The Borough Council of Oadby & Wigston (The Yews, Oadby) Tree Preservation Order 2018.

Interpretation

2. (1) In this Order "the authority" means the Borough Council of Oadby and Wigston unless the context otherwise requires.
(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

Effect


3. (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.
(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to article 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 in the Schedule of this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 10 day of May 2018

The Common Seal of the Borough Council of Oadby and Wigston was hereunto affixed in the presence of:-



(Mayor)



(Head of Law & Governance)



CONFIRMATION OF ORDER

This Order was confirmed by the Oadby and Wigston Borough Council at its meeting of the Development Control Committee without modification on the _____ day of _____ 201 .

Minute Reference:

CONFIRMATION OF ORDER SUBJECT TO MODIFICATION

This Order was confirmed by the Oadby and Wigston Borough Council at its meeting of the Development Control Committee, on the _____ day of _____ 201 , subject to the following modifications:

Minute Reference:

DECISION NOT TO CONFIRM ORDER

A decision not to confirm this Order was taken by Oadby and Wigston Borough Council at its meeting of the Development Control Committee on the _____ day of _____ 201 .

Minute Reference:

DECISION NOT TO VARY ORDER

A decision to vary this Order was taken by Oadby and Wigston Borough Council at its meeting of the Development Control Committee on the day of 201 .

Minute Reference:

DECISION NOT TO REVOKE ORDER

A decision to revoke this Order was taken by Oadby and Wigston Borough Council at its meeting of the Development Control Committee on the day of 201 .

Minute Reference:

SCHEDULE

SPECIFICATION OF TREES

Trees specified Individually

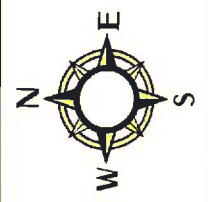
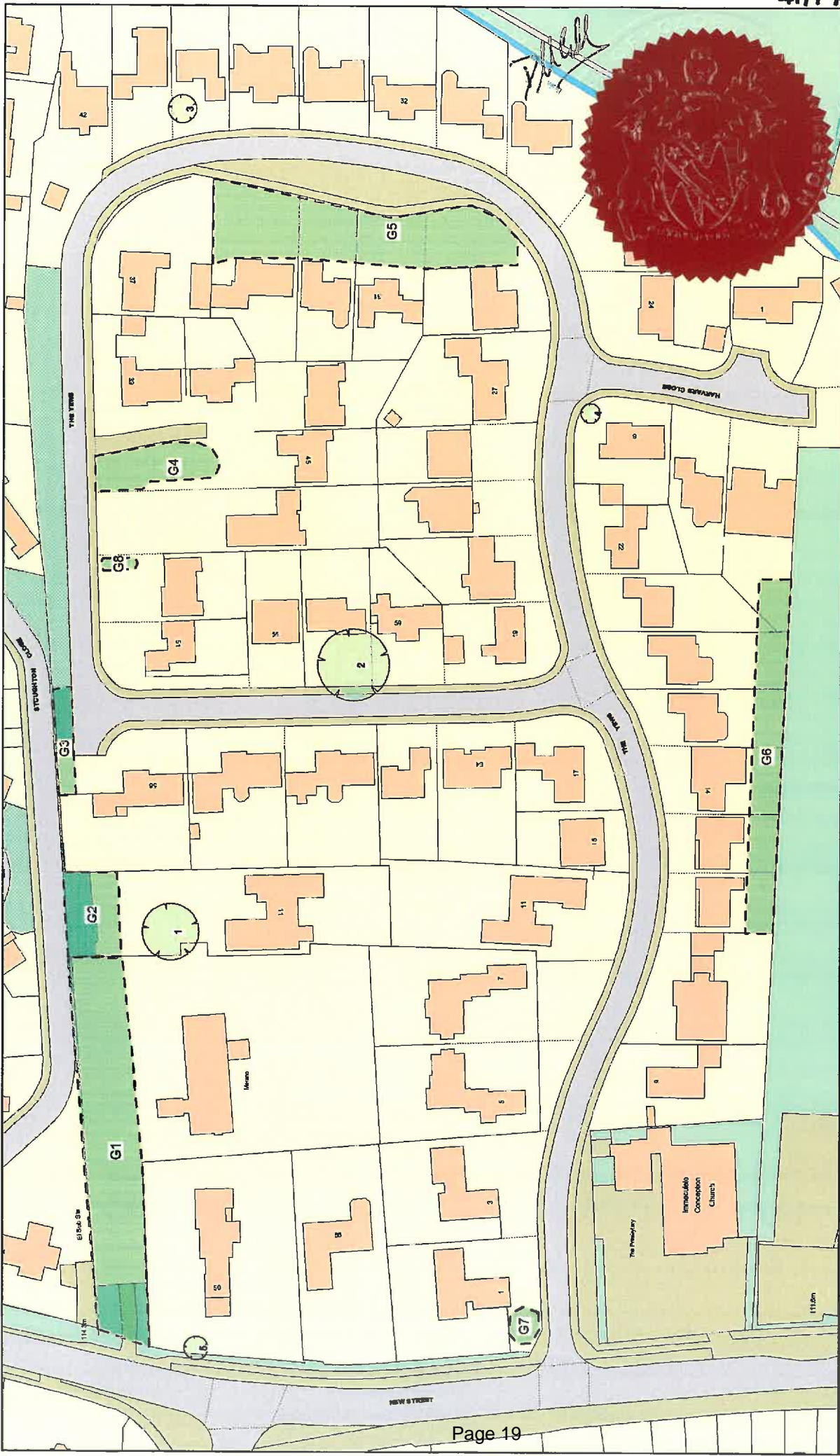
(encircled in black on the map)

Reference on map	Description	Situation
T1	English Oak	Front Garden of 11 Stoughton Close, Oadby
T2	Blue Atlantic Cedar	Front Garden of 57 The Yews, Oadby
T3	Kanzan Cherry	Front Garden of 38 The Yews, Oadby
T4	Blue Colorado Spruce	Front Garden of 6 Harvard Close, Oadby
T5	Yew	Within 50 Stoughton Road, Oadby

Groups of Trees

(within a broken black line on the map)

Reference on map	Description	Situation
G1	22No. Mixed Coniferous species	Within the Grounds of Merano, 52 Stoughton Road, Oadby
G2	5No. Mixed Coniferous species	Within 11 Stoughton Close, Oadby
G3	6No. Corsican pine	Within 56 The Yews, Oadby
G4	5No. Mixed Coniferous species and 4No. Silver birch	39 and 41 The Yews, Oadby
G5	15No. Mixed Coniferous species	29, 31, 33 and 35 The Yews, Oadby
G6	11 No. Corsican pine	10, 12, 14 and 16 The Yews, Oadby and 4 Harvard Close, Oadby
G7	3No. Corsican pine and 1No. Ash	Frontage of 1 The Yews, Oadby
G8	2No. Himalayan birch	Front Garden of 49 The Yews, Oadby



Scale	1:1250
Date	24/04/2018

Oadby and Wigston Borough Council (The Yews, Oadby) Tree Preservation Order 2018

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TOWN AND COUNTRY PLANNING ACTS 1962 and 1968

The Leicestershire County Council

Oadby (New Street)

Tree Preservation Order 1972

The Leicestershire County Council in this order called "the authority", in pursuance of the powers conferred in that behalf by section 29 of the Town and Country Planning Act 1962 ~~and section 16 of the Civic Amenities Act 1967~~, and subject to the provisions of the Forestry Act 1967, hereby makes the following order:-

1. In this Order -
"the Act" means the Town and Country Planning Act 1962;
"owner" means the owner in fee simple, either in possession or who has granted a lease or tenancy of which the unexpired portion is less than three years; lessee (including a sub-lessee) or tenant in possession, the unexpired portion of whose lease or tenancy is three years or more and a mortgagee in possession; and "the Minister" means the Secretary of State for the Environment.
2. Subject to the provisions of this Order and to the exemptions specified in the Second Schedule hereto, no person shall, except with the consent of the authority and in accordance with the conditions, if any, imposed on such consent, cut down, top, lop or wilfully destroy or cause or permit the cutting down, topping, lopping or wilful destruction of any tree specified in the First Schedule hereto or comprised in a group of trees or in a woodland therein specified, the position of which trees, groups of trees and woodlands is defined in the manner indicated in the said First Schedule on the map annexed hereto which map shall, for the purpose of such definition as aforesaid, prevail where any ambiguity arises between it and the specification in the said First Schedule.
3. An application for consent made to the authority under Article 2 of this Order shall be in writing stating the reasons for making the application, and shall by reference if necessary to a plan specify the trees to which the application relates and the operations for the carrying out of which consent is required.
4. (1) Where an application for consent is made to the authority under this Order, the authority may grant such consent either unconditionally, or subject to such conditions (including conditions requiring the replacement of any tree by one or more trees on the site or in the immediate vicinity thereof), as the authority may think fit, or may refuse consent:

Provided that where the application relates to any woodland specified in the First Schedule to this Order the authority shall grant consent so far as accords with the principles of good forestry, except where, in the opinion of the authority, it is

NOTE: If it is desired to fell any of the trees included in this Order, whether included as trees, groups of trees or woodlands, and the trees are trees for the felling of which a licence is required under the Forestry Act 1967, application should be made NOT to the authority for consent under this Order but to the Conservator of Forests for a licence under that Act (section 15(5)).

necessary in the interests of amenity to maintain the special character of the woodlands or the woodland character of the area, and shall not impose conditions on such consent requiring replacement or replanting.

(2) The authority shall keep a register of all applications for consent under this Order containing information as to the nature of the application, the decision of the authority thereon, any compensation awarded in consequence of such decision and any directions as to replanting of woodlands; and every such register shall be available for inspection by the public at all reasonable hours.

5. Where the authority refuse consent under this Order or grant such consent subject to conditions they may when refusing or granting consent certify in respect of any trees for which they are so refusing or granting consent that they are satisfied -
 - (a) that the refusal or condition is in the interests of good forestry; or
 - (b) in the case of trees other than trees comprised in woodlands, that the trees have an outstanding or special amenity value.
6. (1) Where consent is granted under this Order to fell any part of a woodland other than consent for silvicultural thinning then unless -
 - (a) such consent is granted for the purpose of enabling development to be carried out in accordance with a permission to develop land under Part III of the Act, or
 - (b) the authority with the approval of the Minister dispense with replanting,

the authority shall give to the owner of the land on which that part of the woodland is situated a direction in writing specifying the manner in which and the time within which he shall replant such land and where such a direction is given and the part is felled the owner shall, subject to the provision of this Order and section 25 of the Countryside Act 1968, replant the said land in accordance with the direction.

(2) Any direction given under paragraph (1) of this Article may include requirements as to -

- (a) species;
- (b) number of trees per acre;
- (c) the erection and maintenance of fencing necessary for protection of the replanting;
- (d) the preparation of ground, draining, removal of brushwood, lop and top; and
- (e) protective measures against fire.

7. On imposing any condition requiring the replacement of any tree under Article 4 of the Order, or giving a direction under Article 6 of this Order with respect to the replanting of woodlands, the authority shall if such condition or direction relates to land in respect of which byelaws made by a river authority, a drainage board, the Conservators of the River Thames or the Lee Conservancy Catchment Board restrict or regulate the planting of trees, notify the applicant or the owner of the land, as the case may be, of the existence of such byelaws and that any such condition or direction has effect subject to the requirements of the river authority, drainage board, the Conservators of the River Thames or the Lee Conservancy Catchment Board under those byelaws and the condition or direction shall have effect accordingly.
8. The provisions set out in the Third Schedule to this Order, being provisions of Part III of the Act and of section 80 of the Town and Country Planning Act 1968 adapted and modified for the purposes of this Order, shall apply in relation thereto.
9. Subject to the provisions of this Order, any person who has suffered loss or damage in consequence of any refusal (including revocation or modification) of consent under this Order or of any grant of any such consent subject to conditions, shall, if he makes a claim on the authority within the time and in the manner prescribed by this Order, be entitled to recover from the authority compensation in respect of such loss or damage:

Provided that no compensation shall be payable in respect of loss or damage suffered by reason of such refusal or grant of consent in the case of any trees the subject of a certificate in accordance with Article 5 of this Order.

10. In assessing compensation payable under the last preceding Article account shall be taken of:
 - (a) any compensation or contribution which has been paid whether to the claimant or any other person, in respect of the same trees under the terms of this or any other Tree Preservation Order under section 29 of the Act or under the terms of any Interim Preservation Order made under section 8 of the Town and Country Planning (Interim Development) Act 1943, or any compensation which has been paid or which could have been claimed under any provision relating to the preservation of trees or protection of woodlands contained in an operative scheme under the Town and Country Planning Act 1932, and

NOTE: Any person contravening the provisions of this Order is guilty of an offence under subsection (1) of section 62 of the Act and liable on summary conviction to a fine not exceeding fifty pounds; and if in the case of a continuing offence the contravention is continued after conviction he is guilty of a further offence thereunder and liable on summary conviction to an additional fine not exceeding forty shillings for every day on which the contravention is so continued. Under sections 13, 14 and 15 of the Civic Amenities Act 1967 if a tree is wilfully cut down or destroyed, or if topping or lopping is carried out in such a way as to be likely to destroy the tree the fine is £250 or twice the value of the tree whichever is the greater. If a tree other than one which is part of woodland is removed or destroyed in contravention of this Order it is the duty of the owner of the land, unless on his application the local authority dispense with the requirement, to plant another tree of appropriate size and species, at the same place as soon as he reasonably can.

- (b) any injurious affection to any land of the owner which would result from the felling of the trees the subject of the claim.
11. (1) A claim for compensation under this Order shall be in writing and shall be made by serving it on the authority, such service to be effected by delivering the claim at the offices of the authority addressed to the Clerk thereof or by sending it by prepaid post so addressed.
- (2) The time within which any such claim shall be made as aforesaid shall be a period of twelve months from the date of the decision of the authority, or of the Minister, as the case may be, or where an appeal has been made to the Minister against the decision of the authority, from the date of the decision of the Minister on the appeal.
12. Any question of disputed compensation shall be determined in accordance with the provisions of section 128 of the Act.

FIRST SCHEDULETrees specified Individually

(Encircled in black on the map)

<u>No. on Map.</u>	<u>Description</u>	<u>Situation</u>
	None	

Trees specified by Reference to an Area

(Within a dotted black line on the map)

<u>No. on Map</u>	<u>Description</u>	<u>Situation</u>
A.1	The several trees of whatever species standing within the area numbered A.1 on the map.	Land, having an area of approximately 9 acres, between the North Memorial Homes, and the Oadby Launde Infant School, to the east of New Street, Oadby. (Grid Ref. SK 626 008)

Groups of Trees

(Within a broken black line on the map)

<u>No. on Map</u>	<u>Description</u>	<u>Situation</u>
	None	

Woodlands

(Within a continuous black line on the map)

<u>No. on Map</u>	<u>Description</u>	<u>Situation</u>
	None	

SECOND SCHEDULE

This Order shall not apply so as to require the consent of the authority to

- (1) the cutting down of any tree on land which is subject to a forestry dedication covenant where
 - (a) any positive covenants on the part of the owner of the land contained in the same deed as the forestry dedication covenant and at the time of the cutting down binding on the then owner of the land are fulfilled;
 - (b) the cutting down is in accordance with a plan of operations approved by the Forestry Commission under such deed.
- (2) the cutting down of any tree which is in accordance with a plan of operations approved by the Forestry Commission under the approved woodlands scheme.
- * (3) the cutting down, topping or lopping of a tree exempted from the provisions of this Order by section 29(7) of the Act namely a tree which is dying or dead or has become dangerous, or the cutting down, topping or lopping of which is in compliance with obligations imposed by or under an Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance.
- (4) the cutting down, topping or lopping of a tree
 - (a) in pursuance of the power conferred on the Postmaster General by virtue of section 5 of the Telegraph (Construction) Act 1908;
 - (b) by or at the request of
 - (i) a statutory undertaker where the land on which the tree is situated is operational land as defined by the Act and either works on such land cannot otherwise be carried out or the cutting down, topping or lopping is for the purpose of securing safety in the operation of the undertaking;
 - (ii) an electricity board within the meaning of the Electricity Act 1947, where such tree obstructs the construction by the board of any main transmission line or other electric line within the meaning respectively of the Electricity (Supply) Act 1919 and the Electric Lighting Act 1882 or interferes or would interfere with the maintenance or working of any such line;

* NOTE: Section 13(1) of the Civic Amenities Act 1967 requires, unless on the application of the owner the local authority dispense with the requirement, that any tree removed or destroyed under section 29(7) of the Town and Country Planning Act 1962, shall be replaced by another tree of appropriate size and species. In order to enable the local planning authority to come to a decision, on whether or not to dispense with the requirement, notice of the proposed action should be given to the local planning authority which except in a case of emergency shall be of not less than five days.

- (iii) a river authority established under the Water Resources Act 1963, a drainage board constituted or treated as having been constituted under the Land Drainage Act 1930, The Conservators of the River Thames, or the Lee Conservancy Catchment Board, where the tree interferes or would interfere with the exercise of any of the functions of such river authority, drainage board, Conservators of the River Thames or Lee Conservancy Catchment Board in relation to the maintenance, improvement or construction of water courses or of drainage works; or
- (iv) the Minister of Defence for the Royal Air Force, the Minister of Technology or the Board of Trade where in the opinion of such Minister or Board the tree obstructs the approach of aircraft to, or their departure from, any aerodrome or hinders the safe and efficient use of aviation or defence technical installations;
- (c) where immediately required for the purposes of carrying out development authorised by the planning permission granted on an application made under Part III of the Act, or deemed to have been so granted for any of the purposes of that Part;
- (d) which is a fruit tree cultivated for fruit production growing or standing on land comprised in an orchard or garden.

THIRD SCHEDULE

Provisions of the following parts of (a) Part III of the Town and Country Planning Act 1962 and (b) section 80 of the Town and Country Planning Act 1968 as adapted and modified to apply to this Order.

(a) PART III OF THE TOWN AND COUNTRY PLANNING ACT 1962

- 21. (1) Without prejudice to the following provisions as to the revocation or modification of consents, any consent under the Order, including any direction as to replanting given by the authority on the granting of such consent, shall (except in so far as the consent otherwise provides), enure for the benefit of the land and of all persons for the time being interested therein.
- 22. (1) The Minister may give directions to the authority requiring applications for consent under the Order to be referred to him instead of being dealt with by the authority.
 - (2) A direction under this section may relate either to a particular application or to applications of a class specified in the direction.
 - (3) Any application in respect of which a direction under this section has effect shall be referred to the Minister accordingly.
 - (4) Where an application for consent under the Order is referred to the Minister under this section, the provisions of Articles 4 and 5 of the Order shall apply as they apply to an application which falls to be determined by the authority.

(5) Before determining an application referred to him under this section the Minister shall, if either the applicant or the authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.

(6) The decision of the Minister on any application referred to him under this section shall be final.

23. (1) Where an application is made to the authority for consent under the Order and that consent is refused by that authority or is granted by them subject to conditions, or where any certificate or direction is given by the authority, the applicant if he is aggrieved by their decision on the application, or by any such certificate, or the person directed if he is aggrieved by the direction, may by notice under this section appeal to the Minister.

(2) A notice under this section shall be served in writing within twenty-eight days from the receipt of notification of the decision, certificate or direction, as the case may be, or such longer period as the Minister may allow.

(4) Where an appeal is brought under this section from a decision, certificate or direction of the authority, the Minister, subject to the following provisions of this section, may allow or dismiss the appeal, or may reverse or vary any part of the decision of the authority, whether the appeal relates to that part thereof or not, or may cancel any certificate or cancel or vary any direction, and may deal with the application as if it had been made to him in the first instance.

(5) Before determining an appeal under this section, the Minister shall, if either the appellant or the authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.

(7) The decision of the Minister on any appeal under this section shall be final.

24. Where an application for consent under the Order is made to the authority, then unless within two months from the date of receipt of the application, or within such extended period as may at any time be agreed upon in writing between the applicant and the authority, the authority either -

(a) give notice to the applicant of their decision on the application; or

(b) give notice to him that the application has been referred to the Minister in accordance with directions given under section 22 above;

the provisions of the last preceding section shall apply in relation to the application as if the consent to which it relates had been refused by the authority, and as if notification of their decision had been received by the applicant at the end of the said period of two months, or at the end of the said extended period, as the case may be.

27. (1) If it appears to the authority that it is expedient to revoke or modify any consent under the Order granted on an application made under Article 3 of the Order, the authority may by Order revoke or modify the consent to such extent as they consider expedient.

(2) (Subject to the provisions of section 16 of the Civic Amenities Act 1967 and section 80 of the Town and Country Planning Act 1968) an Order under this section shall not take effect unless it is confirmed by the Minister, and the Minister may confirm any such Order submitted to him either without modification or subject to such modifications as he considers expedient.

(3) Where an authority submit an Order to the Minister for his confirmation under this section, the authority shall furnish the Minister with a statement of their reason for making the Order and shall serve notice together with a copy of the aforesaid statement on the owner and on the occupier of the land affected, and on any other person who in their opinion will be affected by the Order, and if within the period of twenty-eight days from the service thereof any person on whom the notice is served so requires, the Minister, before confirming the Order shall afford to that person, and to the authority, an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.

(4) The power conferred by this section to revoke or modify a consent may be exercised at any time before the operations for which consent has been given have been completed:

Provided that the revocation or modification of consent shall not affect so much of those operations as has been previously carried out.

(5) Where a notice has been served in accordance with the provisions of subsection (3) of this section, no operations or further operations as the case may be, in pursuance of the consent granted, shall be carried out pending the decision of the Minister under subsection (2) of this section.

(b) TOWN AND COUNTRY PLANNING ACT 1968

80. (1) The following provisions shall have effect where the local planning authority have made an Order (hereinafter called "such Order") under section 27 above revoking or modifying any consent granted on an application made under a tree preservation order but have not submitted such Order to the Minister for confirmation by him and the owner and the occupier of the land and all persons who in the authority's opinion will be affected by such Order have notified the authority in writing that they do not object to such Order.

(2) The authority shall advertise the fact that such Order has been made and the advertisement shall specify (a) the period (not less than twenty-eight days from the date on which the advertisement first appears) within which persons affected by such Order may give notice to the Minister that they wish for an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose and (b) the period (not less than 14 days from the expiration of the period referred to in paragraph (a) above) at the expiration of which, if no such

notice is given to the Minister, such Order may take effect by virtue of this section and without being confirmed by the Minister.

(3) The authority shall also serve notices to the same effect on the persons mentioned in subsection (1) above.

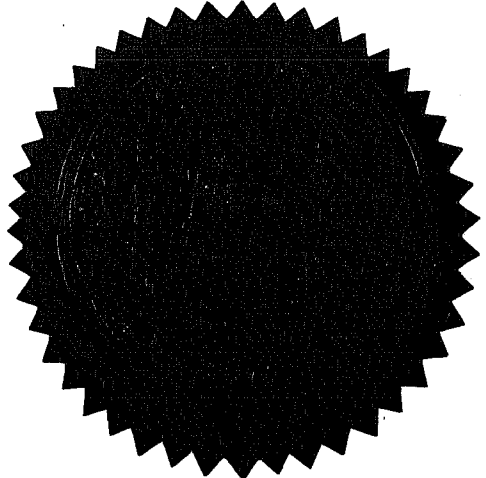
(4) The authority shall send a copy of any advertisement published under subsection (2) above to the Minister, not more than three days after the publication.

(5) If within the period referred to in subsection (2)(a) above no person claiming to be affected by such Order has given notice to the Minister as aforesaid and the Minister has not directed that such Order be submitted to him for confirmation, such Order shall at the expiration of the period referred to in subsection (2)(b) of this section take effect by virtue of this section and without being confirmed by the Minister as required by section 27(2) of the Town and Country Planning Act 1962.

(6) This section does not apply to such Order revoking or modifying a consent granted or deemed to have been granted by the Minister under Part III or Part IV of the Town and Country Planning Act 1962 or under Part II or Part V of the Town and Country Planning Act 1968.

The Common Seal of the
Leicestershire County Council was
hereunto affixed on the 13th
day of April One thousand
nine hundred and Seventy three

113970(b)

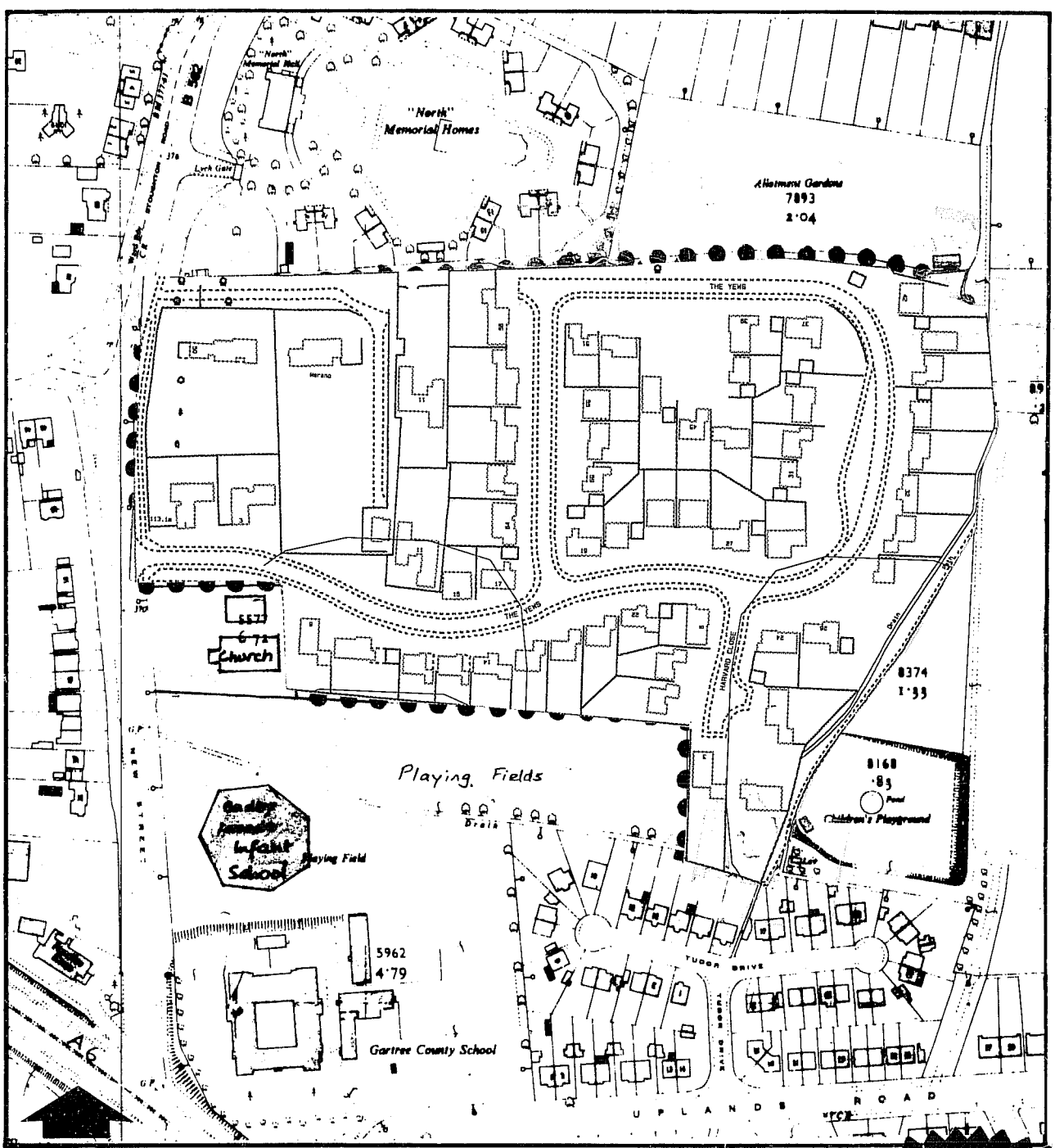


in the presence of:-

John Doherty
.....
Deputy Clerk of the County Council

LEICESTERSHIRE COUNTY COUNCIL

OADBY (NEW STREET) Tree Preservation Order 1972



Scale 1:2500

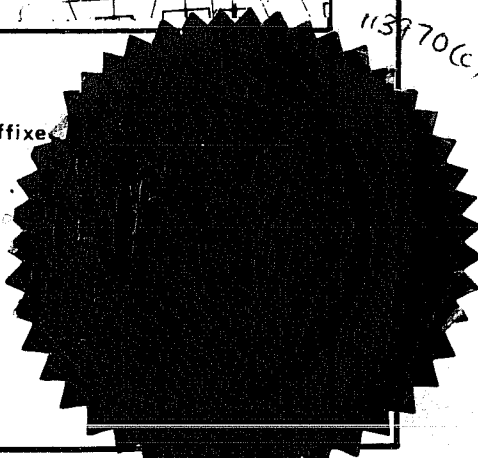
Extract SK 6200

The Common Seal of the Leicestershire County Council was hereunto affixed

13th day of April

One thousand nine hundred and seventy three in the presence of :-

John John
 Deputy Clerk of the County Council





Development Control Committee	Thursday, 30 August 2018	Matter for Decision
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Report Title: **The Borough Council Of Oadby & Wigston (Wigston Delivery Office) Tree Preservation Order 2018**

Report Author(s): **Michael Bennetto (Arboricultural Officer)**

Purpose of Report:	The purpose of this report is to seek a decision from the Committee to confirm or otherwise The Borough Council Of Oadby & Wigston (Wigston Delivery Office) Tree Preservation Order 2018 ("the Order") which was made on 10 May 2018.
Report Summary:	The Order was created following an application for tree works within a Conservation Area. The pine has good form and condition is fair. It continues to provide good amenity value and has a good safe useful life expectancy in this well used prominent location.
Recommendation(s):	That The Borough Council Of Oadby & Wigston (Wigston Delivery Office) Tree Preservation Order 2018 be confirmed.
Responsible Strategic Director, Head of Service and Officer Contact(s):	<p>Anne Court (Chief Executive) (0116) 257 2606 anne.court1@oadby-wigston.gov.uk</p> <p>Adrian Thorpe (Head of Planning, Development and Regeneration) (0116) 257 2645 adrian.thorpe@oadby-wigston.gov.uk</p> <p>Michael Bennetto (Arboricultural Officer) (0116) 257 2697 michael.bennetto@oadby-wigston.gov.uk</p>
Corporate Priorities:	Balanced Economic Development (CP3) Green & Safe Places (CP4) Wellbeing for All (CP5)
Vision and Values:	Accountability (V1) Customer Focus (V5)
Report Implications:-	
Legal:	All legal requirements have been fulfilled and interested parties are to be informed of confirmation as soon as reasonably practicable.
Financial:	There are no implications directly arising from this report.
Corporate Risk Management:	No corporate risk(s) identified.
Equalities and Equalities Assessment (EA):	There are no implications arising from this report. EA not applicable.
Human Rights:	There are no implications arising from this report.

Health and Safety:	There are no implications arising from this report.
Statutory Officers' Comments:-	
Head of Paid Service:	The report is satisfactory.
Chief Finance Officer:	The report is satisfactory.
Monitoring Officer:	The report is satisfactory.
Consultees:	All persons interested in the land affected by the Order.
Background Papers:	Town and Country Planning Act 1990 Part VIII, Chapter I, Trees The Town and Country Planning (Tree Preservation)(England) Regulations 2012 Planning Application No. 18/00159/TCA Planning Application No. 18/00074/TCA
Appendices:	1. TPO - Wigston Delivery Office (Provisional)

1. Information

- 1.1 The Order was created following an application for tree works within a Conservation Area (application reference no. 18/00159/TCA).
- 1.2 The application was to fell one corsican pine (*Pinus nigra*) and two sycamore trees (*Acer pseudoplatanus*) due to a nuisance caused by bird mess that affects the use of the business property, causing damage to paintwork and a nuisance to employees and customers alike, replacement planting was offered. The pine is of good form and condition with a greater life expectancy than the adjacent sycamores which are in the early stages of decline.
- 1.3 An application for the same works without replacement planting had previously been submitted (application reference no. 18/00074/TCA). This application received objections from the local tree warden and two Councillors. The application was withdrawn.
- 1.4 A split decision was issued, refusing removal of the pine, serving a TPO for the pine only, and permitting removal of the two sycamores. The sycamores do not meet the required criteria for inclusion in a TPO. In conversation with the applicant, it was suggested that an application to reduce the branches over the car park might be more appropriate and not result in the loss of the tree.
- 1.5 The application was objected to by a local tree warden. No representations in support or objection to the TPO were received.

2. Conclusions and Recommendations

- 2.1 The pine continues to provide good amenity value and has a good safe useful life expectancy.
- 2.2 It is recommended that the Order be confirmed.

Town and Country Planning Act 1990

The Borough Council of Oadby & Wigston (Wigston Delivery Office) Tree Preservation Order 2018

The Borough Council of Oadby & Wigston, in exercise of the powers conferred on them by sections 198 of the Town and Country Planning Act 1990 hereby make the following Order:-

Citation

1. This Order may be cited as The Borough Council of Oadby & Wigston (Wigston Delivery Office), Tree Preservation Order 10 May 2018

Interpretation

2. (1) In this Order "the authority" means the Borough Council of Oadby and Wigston unless the context otherwise requires.
(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

Effect

3. (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.
(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to article 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 in the Schedule of this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 10 day of May 2018

The Common Seal of the Borough Council of Oadby and Wigston was hereunto affixed in the presence of:-



(Mayor)



(Head of Law & Governance)



CONFIRMATION OF ORDER

This Order was confirmed by the Oadby and Wigston Borough Council at its meeting of the Development Control Committee without modification on the day of 201 .

Minute Reference:

CONFIRMATION OF ORDER SUBJECT TO MODIFICATION

This Order was confirmed by the Oadby and Wigston Borough Council at its meeting of the Development Control Committee, on the day of 201 , subject to the following modifications:

Minute Reference:

DECISION NOT TO CONFIRM ORDER

A decision not to confirm this Order was taken by Oadby and Wigston Borough Council at its meeting of the Development Control Committee on the day of 201 .

Minute Reference:

DECISION NOT TO VARY ORDER

A decision to vary this Order was taken by Oadby and Wigston Borough Council at its meeting of the Development Control Committee on the day of 201 .

Minute Reference:

DECISION NOT TO REVOKE ORDER

A decision to revoke this Order was taken by Oadby and Wigston Borough Council at its meeting of the Development Control Committee on the day of 201 .

Minute Reference:

SCHEDULE

SPECIFICATION OF TREES

Trees specified Individually

(encircled in black on the map)

Reference on map	Description	Situation
T1	Corsican Pine	Within frontage of Wigston Delivery Office

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

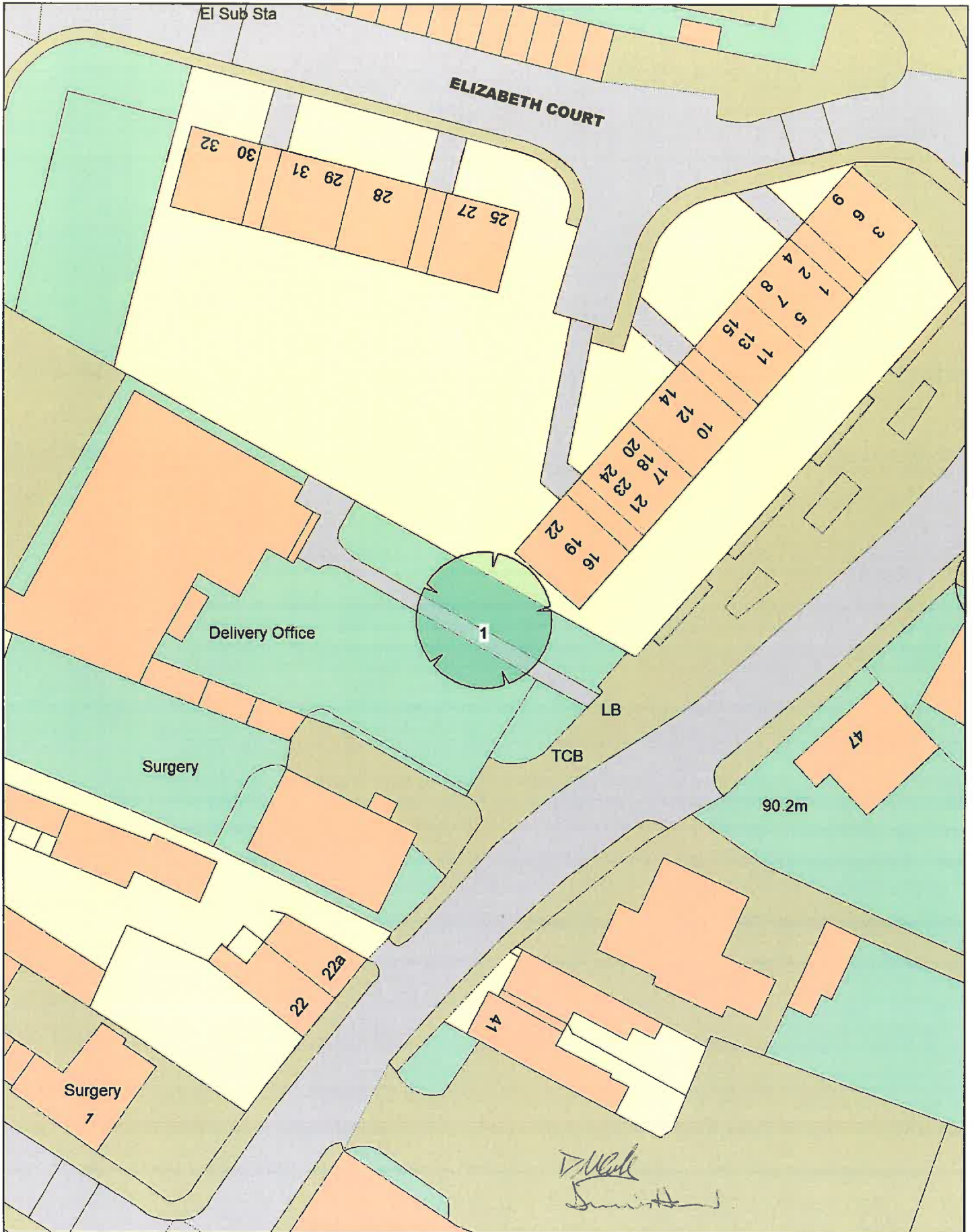
(within a broken black line on the map)

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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The Borough Council of Oadby and Wigston (Wigston Delivery Office) Tree Preservation Order 2018

Scale 1:500

Date 02/05/2018

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Agenda Item 6c



Development Control Committee	Thursday, 30 August 2018	Matter for Decision
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Report Title: **The Borough Council Of Oadby & Wigston (Land At 14 Granville Avenue, Oadby) Tree Preservation Order 2018**

Report Author(s): **Michael Bennetto (Arboricultural Officer)**

Purpose of Report:	The purpose of this report is to seek a decision from the Committee to confirm or otherwise The Borough Council Of Oadby & Wigston (Land At 14 Granville Avenue, Oadby) Tree Preservation Order 2018 ("the Order") which was made on 27 April 2018.
Report Summary:	The Order was created following a Tree Preservation Order (TPO) enquiry about 14 Granville Avenue, Oadby following reports that the tree may be under threat of removal.
Recommendation(s):	That The Borough Council Of Oadby & Wigston (Land At 14 Granville Avenue, Oadby) Tree Preservation Order 2018 be confirmed.
Responsible Strategic Director, Head of Service and Officer Contact(s):	<p>Anne Court (Chief Executive) (0116) 257 2606 anne.court1@oadby-wigston.gov.uk</p> <p>Adrian Thorpe (Head of Planning, Development and Regeneration) (0116) 257 2645 adrian.thorpe@oadby-wigston.gov.uk</p> <p>Michael Bennetto (Arboricultural Officer) (0116) 257 2697 michael.bennetto@oadby-wigston.gov.uk</p>
Corporate Priorities:	Balanced Economic Development (CP3) Green & Safe Places (CP4) Wellbeing for All (CP5)
Vision and Values:	Accountability (V1) Customer Focus (V5)
Report Implications:-	
Legal:	All legal requirements have been fulfilled and interested parties are to be informed of confirmation as soon as reasonably practicable.
Financial:	There are no implications directly arising from this report.
Corporate Risk Management:	No corporate risk(s) identified.
Equalities and Equalities Assessment (EA):	There are no implications arising from this report. EA not applicable.
Human Rights:	There may be implications under Articles 1 and 8 of the Protocol

	No. 1 to the European Convention on Human Rights regarding the right of respect for the peaceful enjoyment of possessions and a person's private and family life and home. However, these issues have been taken into account in the determination of this Order.
Health and Safety:	There are no implications arising from this report.
Statutory Officers' Comments:-	
Head of Paid Service:	The report is satisfactory.
Chief Finance Officer:	The report is satisfactory.
Monitoring Officer:	The report is satisfactory.
Consultees:	All persons interested in the land affected by the Order.
Background Papers:	Town and Country Planning Act 1990 Part VIII, Chapter I, Trees The Town and Country Planning (Tree Preservation)(England) Regulations 2012 Protocol No. 1 to the European Convention on Human Rights Oadby Court Conservation Area Appraisal and Development Control Guidance (February 2007) The National Library of Scotland Maps (1842-1952) - Leicestershire XXXVII (includes: Glen Parva; Leicester; Wigston Magna)
Appendices:	1. TPO - Land at 14 Granville Avenue, Oadby (Provisional)

1. Information

- 1.1 The Order was created following a TPO enquiry about 14 Granville Avenue, Oadby following reports that the owner was considering removing a tree. Upon investigation, the tree is a mature scots pine (*Pinus sylvestris*) located in a prominent position on the boundary of no. 14 Granville Avenue and the highway. The tree shows no significant defects and has a good safe useful life expectancy.
- 1.2 On the 27 April 2018, Notices were served on interested parties in accordance with The Town and Country Planning (Tree Preservation)(England) Regulations 2012, Regulation 5.
- 1.3 One letter of support for the TPO was received which also provided information detailing the trees provenance through its apparent inclusion in the earliest ordinance survey maps, both in 1884 and between 1912-13.
- 1.4 Other trees demarking the historic north western boundary trees of Oadby Hill House are within the pavement along Granville Avenue and managed by Highways. Two other trees possibly forming the western end of the southern boundary are already covered by a 1989 TPO at 16 Granville Avenue.

2. Conclusions and Recommendation

- 2.1 The tree provides good amenity value to the area and has a good safe useful life expectancy with no apparent reason to suggest it cannot continue to be kept in good form and condition.
- 2.2 It is recommended that the Order be confirmed.

Town and Country Planning Act 1990

The Borough Council of Oadby & Wigston (Land at 14 Granville Avenue) Tree Preservation Order 2018

The Borough Council of Oadby & Wigston, in exercise of the powers conferred on them by sections 198 of the Town and Country Planning Act 1990 hereby make the following Order:-

Citation

1. This Order may be cited as The Borough Council of Oadby & Wigston (Land at 14 Granville Avenue) Tree Preservation Order 2018.

Interpretation

2. (1) In this Order "the authority" means the Borough Council of Oadby and Wigston unless the context otherwise requires.
(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

Effect

3. (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.
(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to article 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 in the Schedule of this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this **27** day of **April**

The Common Seal of the Borough Council of Oadby and Wigston was hereunto affixed in the presence of:-



(Mayor)



(Head of Law & Governance)



CONFIRMATION OF ORDER

This Order was confirmed by the Oadby and Wigston Borough Council at its meeting of the Development Control Committee without modification on the day of 201 .

Minute Reference:

CONFIRMATION OF ORDER SUBJECT TO MODIFICATION

This Order was confirmed by the Oadby and Wigston Borough Council at its meeting of the Development Control Committee, on the day of 201 , subject to the following modifications:

Minute Reference:

DECISION NOT TO CONFIRM ORDER

A decision not to confirm this Order was taken by Oadby and Wigston Borough Council at its meeting of the Development Control Committee on the day of 201 .

Minute Reference:

SCHEDULE

SPECIFICATION OF TREES

Trees specified Individually

(encircled in black on the map)

Reference on map	Description	Situation
T1	Scots Pine	Frontage of 14 Granville Avenue, Oadby.

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

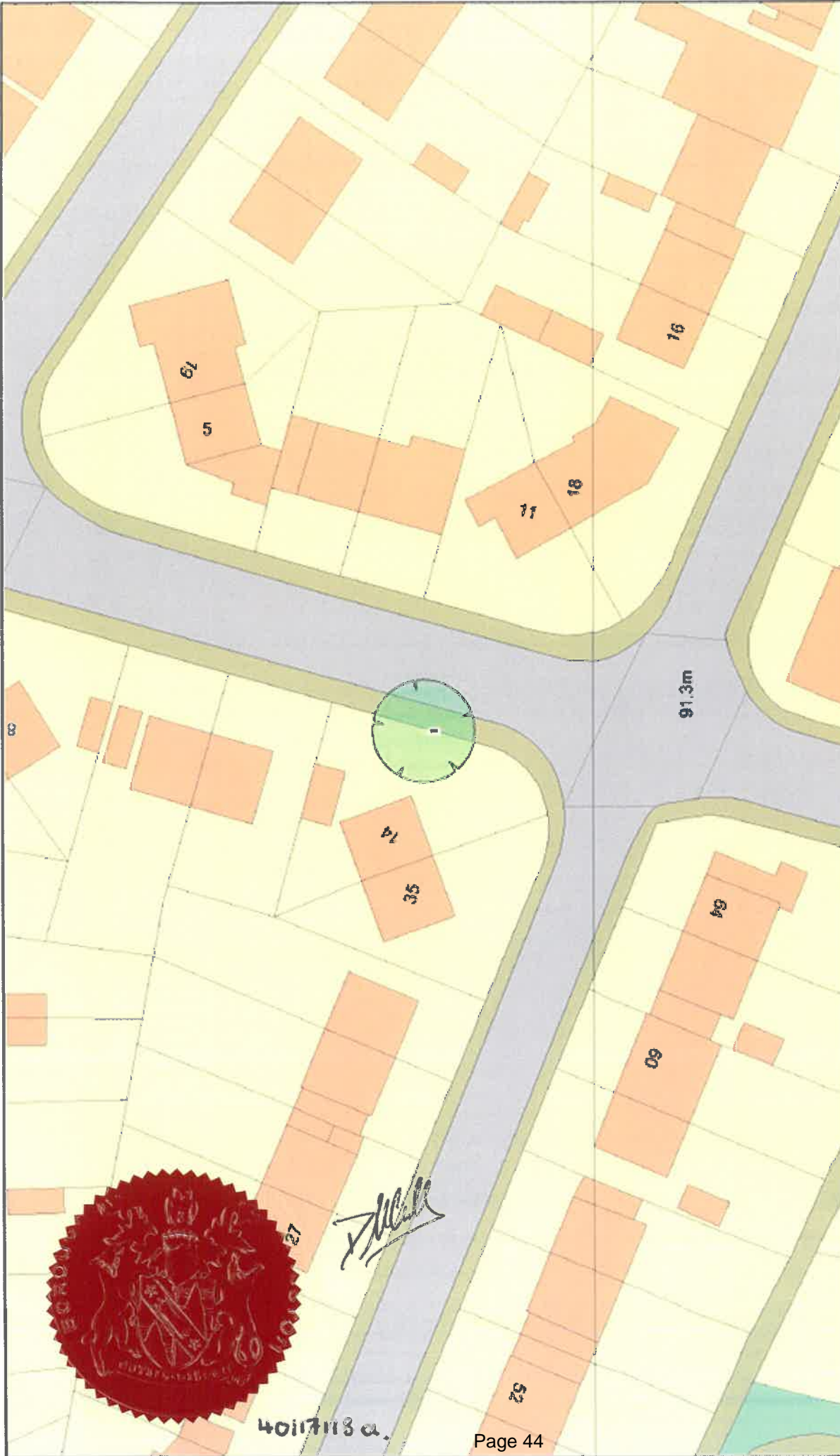
(within a broken black line on the map)

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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Scale	1:500
Date	27/04/2018

The Borough Council of Oadby and Wigston (Land at 14 Granville Avenue) Tree Preservation Order 2018

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Stewart

40117113 a.



Development Control Committee	Thursday, 30 August 2018	Matter for Decision
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Report Title: **The Borough of Oadby and Wigston (Land At 98 Saffron Road, South Wigston (No.2)) Tree Preservation Order 2018**

Report Author(s): **Michael Bennetto (Arboricultural Officer)**

Purpose of Report:	The purpose of this report is to seek a decision from the Committee to confirm or otherwise The Borough of Oadby and Wigston (Land At 98 Saffron Road, South Wigston (No.2)) Tree Preservation Order 2018 ("the Order") which was made on 10 May 2018.
Report Summary:	Trees at the frontage of no. 98 Saffron Road are currently protected by a County Council Area Tree Preservation Order (TPO) from 1971 ("the old Order"). As part of replacing the old Order with up-to-date Oadby and Wigston Borough Council (OWBC) Orders, a new Order was put in place provisionally, however this Order was not confirmed and lapsed ("the lapsed Order"). A replacement Order has been made ("the replacement Order").
Recommendation(s):	<p>A. That The Borough of Oadby and Wigston (Land At 98 Saffron Road, South Wigston (No.2)) Tree Preservation Order 2018 be confirmed; and</p> <p>B. That the lapsed Borough of Oadby and Wigston (Land at 98 Saffron Road, South Wigston, Leicestershire, LE18 4UN) Tree Preservation Order 2016 is formally recorded as not confirmed.</p>
Responsible Strategic Director, Head of Service and Officer Contact(s):	<p>Anne Court (Chief Executive) (0116) 257 2606 anne.court1@oadby-wigston.gov.uk</p> <p>Adrian Thorpe (Head of Planning, Development and Regeneration) (0116) 257 2645 adrian.thorpe@oadby-wigston.gov.uk</p> <p>Michael Bennetto (Arboricultural Officer) (0116) 257 2697 michael.bennetto@oadby-wigston.gov.uk</p>
Corporate Priorities:	Balanced Economic Development (CP3) Green & Safe Places (CP4) Wellbeing for All (CP5)
Vision and Values:	Accountability (V1) Customer Focus (V5)
Report Implications:-	
Legal:	All legal requirements have been fulfilled and interested parties are to be informed of confirmation as soon as reasonably practicable.

Financial:	There are no implications directly arising from this report.
Corporate Risk Management:	No corporate risk(s) identified.
Equalities and Equalities Assessment (EA):	There are no implications arising from this report. EA not applicable.
Human Rights:	There may be implications under Articles 1 and 8 of the Protocol No. 1 to the European Convention on Human Rights regarding the right of respect for the peaceful enjoyment of possessions and a person's private and family life and home. However, these issues have been taken into account in the determination of this Order.
Health and Safety:	There are no implications arising from this report.
Statutory Officers' Comments:-	
Head of Paid Service:	The report is satisfactory.
Chief Finance Officer:	The report is satisfactory.
Monitoring Officer:	The report is satisfactory.
Consultees:	All persons interested in the land affected by the Order.
Background Papers:	Town and Country Planning Act 1990 Part VIII, Chapter I, Trees The Town and Country Planning (Tree Preservation)(England) Regulations 2012 Protocol No. 1 to the European Convention on Human Rights
Appendices:	<ol style="list-style-type: none"> 1. TPO - Land at 98 Saffron Road, Wigston (Provisional) 2. TPO - Land at 98 Saffron Road, Wigston (Lapsed) 3. TPO - Land at 98 Saffron Road, Wigston (County Council)

1. Information

- 1.1 The replacement Order was created following the request of the Leicestershire County Council's Landscape Officer, Andrew Shaw, that the old County Council Area TPO's are brought up to date with new OWBC Orders.
- 1.2 The Secretary of State's view on the matter is that Area classifications should only be used in emergencies as a temporary measure until the trees in the said area can be assessed properly and reclassified accordingly. Local Planning Authorities (LPA) have been encouraged to resurvey Area TPO's with a view to replacing them with alternative classifications for some time now.
- 1.3 The lapsed Order (TPO/0314/TREE) was previously put in place on 4 November 2016. This Order was not confirmed within 6 months and the provisional cover has therefore lapsed. Where an Order has not been confirmed by the LPA the decision must still be officially recorded.
- 1.4 The old existing County TPO is an Area Order from 1971 and covers the majority of trees in the frontage of no. 98 Saffron Road. The trees at the site have been surveyed and those in good condition that are appropriate to the location and space available have been selected to be covered by the new replacement Order.

1.5 No representations have been made in support or objection of the replacement Order.

2. Conclusions and Recommendations

2.1 For the purpose of correct procedure and record keeping, it is recommended to formally record the lapsed Order as not confirmed.

2.2 It is recommended that the replacement Order is confirmed. The County Council Area TPO can then be revoked.

Town and Country Planning Act 1990

The Borough Council of Oadby & Wigston (98 Saffron Road, Wigston) Tree Preservation Order 2018

The Borough Council of Oadby & Wigston, in exercise of the powers conferred on them by sections 198 of the Town and Country Planning Act 1990 hereby make the following Order:-

Citation

1. This Order may be cited as The Borough Council of Oadby & Wigston (98 Saffron Road, Wigston) Tree Preservation Order 10.05.2018

Interpretation

2. (1) In this Order "the authority" means the Borough Council of Oadby and Wigston unless the context otherwise requires.
(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

Effect

3. (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.
(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to article 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 in the Schedule of this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 10 day of May 2018

The Common Seal of the Borough Council of Oadby and Wigston was hereunto affixed in the presence of:-



(Mayor)



(Head of Law & Governance)



CONFIRMATION OF ORDER

This Order was confirmed by the Oadby and Wigston Borough Council at its meeting of the Development Control Committee without modification on the day of 201 .

Minute Reference:

CONFIRMATION OF ORDER SUBJECT TO MODIFICATION

This Order was confirmed by the Oadby and Wigston Borough Council at its meeting of the Development Control Committee, on the day of 201 , subject to the following modifications:

Minute Reference:

DECISION NOT TO CONFIRM ORDER

A decision not to confirm this Order was taken by Oadby and Wigston Borough Council at its meeting of the Development Control Committee on the day of 201 .

Minute Reference:

DECISION NOT TO VARY ORDER

A decision to vary this Order was taken by Oadby and Wigston Borough Council at its meeting of the Development Control Committee on the day of 201 .

Minute Reference:

DECISION NOT TO REVOKE ORDER

A decision to revoke this Order was taken by Oadby and Wigston Borough Council at its meeting of the Development Control Committee on the day of 201 .

Minute Reference:

SCHEDULE

SPECIFICATION OF TREES

Trees specified Individually
(encircled in black on the map)

Reference on map	Description	Situation
T1	Ash	Front of 98 Saffron Road
T2	Sycamore	Front of 98 Saffron Road
T3	Ash	Front of 98 Saffron Road
T4	Flowering Cherry	Front of 98 Saffron Road
T5	Sycamore	Front of 98 Saffron Road

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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Scale	1:500
Date	09/05/2018

The Borough Council of Oadby & Wigston (Land at 98 Saffron Road, South Wigston (No.2)) Tree Preservation Order 2018

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THE BOROUGH COUNCIL OF OADBY & WIGSTON (LAND AT 98 SAFFRON ROAD, SOUTH WIGSTON, LEICESTERSHIRE, LE18 4UN) TREE PRESERVATION ORDER 2016

The Borough Council of Oadby & Wigston, in exercise of the powers conferred on them by sections 198 of the Town and Country Planning Act 1990 hereby make the following Order:-

Citation

1. This Order may be cited as **The Borough Council of Oadby and Wigston (Land at 98 Saffron Road, South Wigston, Leicestershire, LE18 4UN) Tree Preservation Order 2016**.

Interpretation

2. (1) In this Order "the authority" means the Borough Council of Oadby and Wigston unless the context otherwise requires.
- (2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

Effect

3. (1) Subject to article 5, this Order takes effect provisionally on the date on which it is made.
- (2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to article 4, no person shall-
 - (a) cut down;
 - (b) top;
 - (c) lop;
 - (d) uproot;
 - (e) wilfully damage; or
 - (f) wilfully destroy;any tree to which an order relates, or shall cause or permit the carrying out of any of the activities in sub-paragraphs (a) to (f) to such a tree, except with the written consent of the authority and, where such consent is given subject to conditions, in accordance with those conditions.

Exceptions

4. (1) Nothing in article 3 shall prevent-
 - (a) the cutting down, topping, lopping or uprooting of a tree-
 - (i) which is dead;
 - (ii) in compliance with any obligation imposed by or under an Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance;
 - (iii) 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-
 - (aa) in the interests of the safe operation of the undertaking;
 - (bb) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker;
 - (cc) to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;
 - (iv) 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 or schemes);
 - (v) where that work is urgently necessary for national security purposes;
 - (vi) where that tree is cultivated for the production of fruit in the course of a business or trade and such work is in the interests of that business or trade;
 - (vii) so far as such work is necessary to implement a planning permission (other than an outline planning permission or, without prejudice to paragraph (iii)(cc), 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 Town and Country Planning Act 1990 (control over development), or deemed to have been granted (whether for the purposes of that Part or otherwise);

- (viii) 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 Permitted Development) Order 1995; or
 - (ix) 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" shall have the same meanings as in section 72(1) of the Land Drainage Act 1991 (interpretation);
 - (b) the removal of dead branches from a living tree;
 - (c) the cutting down, uprooting, topping or lopping of a tree, to the extent that such works are urgently necessary to remove an immediate risk of serious harm, or to such other extent as agreed in writing by the authority prior to the works being undertaken;
 - (d) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit; or
 - (e) without prejudice to sub-paragraph (a)(ii), 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 (other powers etc of licence holders - felling and lopping of trees etc).
- (2) Where paragraphs (1)(a)(i) or (1)(c) apply, notice in writing of the proposed activities shall be given to the authority-
- (a) in the case of works urgently necessary to remove an immediate risk of serious harm, as soon as practicable after the works become necessary; and
 - (b) in any other case at least five working days prior to the date on which the works are to be commenced.
- (3) In paragraph (1), "statutory undertaker" means any of the following-
- (a) 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;
 - (b) a relevant airport operator (within the meaning of Part V of the Airports Act 1986 (status of certain airport operators as statutory undertakers, etc));
 - (c) the holder of a licence under section 6 of the Electricity Act 1989 (licences authorising supply, etc);
 - (d) a gas transporter;
 - (e) an operator to whom the telecommunications code (set out in Schedule 2 to the Telecommunications Act 1984) applies;
 - (f) a water or sewerage undertaker;
 - (g) the Civil Aviation Authority, a body acting on behalf of that authority or a person who holds a licence under Chapter I of Part I of the Transport Act 2000 (air traffic services);
 - (h) a universal postal service provider in connection with the provision of a universal postal service.

Application to trees to be planted pursuant to a condition

5. 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 14 day of NOVEMBER 2016

The Common Seal of the Borough Council of Oadby and Wigston was hereunto affixed in the presence of:-

R. E. ...

(Mayor)

A. ...

DIRECTOR OF SERVICES



25/16/17

~~(Head of Corporate Resources)~~

CONFIRMATION OF ORDER

This Order was confirmed by the Oadby and Wigston Borough Council at its meeting of the Development Control Committee without modification on the day of 2016

Minute Reference:

CONFIRMATION OF ORDER SUBJECT TO MODIFICATION

This Order was confirmed by the Oadby and Wigston Borough Council at its meeting of the Development Control Committee, on the day of 2016, subject to the following modifications:

Minute Reference:

DECISION NOT TO CONFIRM ORDER

A decision not to confirm this Order was taken by Oadby and Wigston Borough Council at its meeting of the Development Control Committee on the day of 2016.

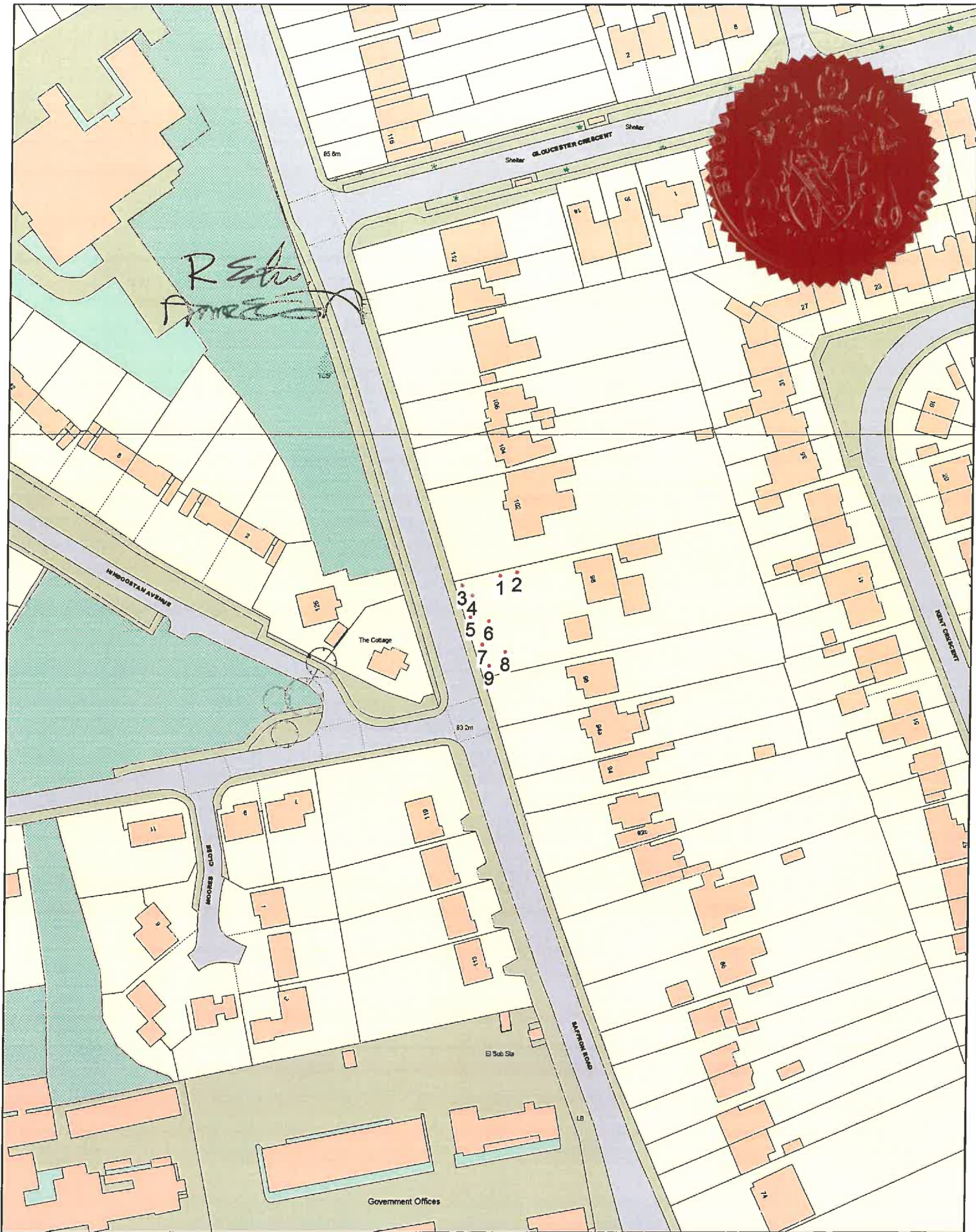
Minute Reference:

SCHEDULE

SPECIFICATION OF TREES

Trees specified individually
(encircled in red on the map)

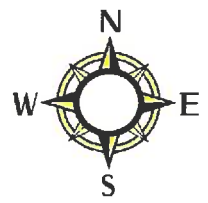
<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
1	Acer pseudoplatanus	Northern boundary of land at 98 Saffron Road, Wigston, Leicestershire, LE18 4UN
2	Acer pseudoplatanus	Northern boundary of land at 98 Saffron Road, Wigston, Leicestershire, LE18 4UN
3	Acer pseudoplatanus	North western boundary of land at 98 Saffron Road, Wigston, Leicestershire, LE18 4UN
4	Fraxinus excelsior	Western boundary of land at 98 Saffron Road, Wigston, Leicestershire, LE18 4UN
5	Acer pseudoplatanus	Western boundary of land at 98 Saffron Road, Wigston, Leicestershire, LE18 4UN
6	Acer pseudoplatanus	Towards the western boundary of 98 Saffron Road, Wigston, Leicestershire, LE18 4UN
7	Fraxinus excelsior	Western boundary of land at 98 Saffron Road, Wigston, Leicestershire, LE18 4UN
8	Acer pseudoplatanus	Towards the western boundary of 98 Saffron Road, Wigston, Leicestershire, LE18 4UN
9	Acer pseudoplatanus	South western boundary of land at 98 Saffron Road, Wigston, Leicestershire, LE18 4UN



**THE BOROUGH COUNCIL OF OADBY & WIGSTON
 (LAND AT 98 SAFFRON ROAD, SOUTH WIGSTON,
 LEICESTERSHIRE, LE18 4UN) TREE PRESERVATION**

Scale 1:1250

Date 10/11/2016



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OLNEY AND WIGSTON BOROUGH COUNCIL

Title of T.P.O. WIGSTON (SAFFRON ROAD) T.P.O. 1974

Address: Fronting number 98 Saffron Road
Wigston.

Serving Authority _____

Date Served 27th February 1974

Date Confirmed: 23rd April 1974

Number of trees classified as individual specimens Nil

Approximate number of trees comprised in group classifications Nil

Approximate acreage/hectare classified in areas _____

Approximate acreage/hectare classified in woodlands _____

Applications to lop, top or fell trees:-

FIRST SCHEDULETrees Specified Individually

(encircled in black on the map)

<u>No. on Map</u>	<u>Description</u>	<u>Situation</u>
NONE		

Trees Specified by reference to an area

(within a dotted black line on the map)

<u>No. on Map</u>	<u>Description</u>	<u>Situation</u>
A.1	The several trees of whatever species standing within the area marked A.1 on the map	Fronting No. 98, Saffron Road, Wigston. (Grid Ref: SP.584989)

Groups of Trees

(within a broken black line on the map)

<u>No. on Map</u>	<u>Description</u>	<u>Situation</u>
NONE		

Woodlands

(within a continuous black line on the map)

<u>No. on Map</u>	<u>Description</u>	<u>Situation</u>
NONE		

SECOND SCHEDULE

This Order shall not apply so as to require the consent of the authority to

- (1) the cutting down of any tree on land which is subject to a forestry dedication covenant where
 - (a) any positive covenants on the part of the owner of the land contained in the same deed as the forestry dedication covenant and at the time of the cutting down binding on the then owner of the land are fulfilled;
 - (b) the cutting down is in accordance with a plan of operations approved by the Forestry Commission under such deed.
- (2) the cutting down of any tree which is in accordance with a plan of operations approved by the Forestry Commission under the approved woodlands scheme.
- * (3) the cutting down, topping or lopping of a tree exempted from the provisions of this Order by section 29(7) of the Act namely a tree which is dying or dead or has become dangerous, or the cutting down, topping or lopping of which is in compliance with obligations imposed by or under an Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance.
- (4) the cutting down, topping or lopping of a tree
 - (a) in pursuance of the power conferred on the Postmaster General by virtue of section 5 of the Telegraph (Construction) Act 1908;
 - (b) by or at the request of
 - (i) a statutory undertaker where the land on which the tree is situated is operational land as defined by the Act and either works on such land cannot otherwise be carried out or the cutting down, topping or lopping is for the purpose of securing safety in the operation of the undertaking;
 - (ii) an electricity board within the meaning of the Electricity Act 1947, where such tree obstructs the construction by the board of any main transmission line or other electric line within the meaning respectively of the Electricity (Supply) Act 1919 and the Electric Lighting Act 1882 or interferes or would interfere with the maintenance or working of any such line;

* NOTE: Section 13(1) of the Civic Amenities Act 1967 requires, unless on the application of the owner the local authority dispense with the requirement, that any tree removed or destroyed under section 29(7) of the Town and Country Planning Act 1962, shall be replaced by another tree of appropriate size and species. In order to enable the local planning authority to come to a decision, on whether or not to dispense with the requirement, notice of the proposed action should be given to the local planning authority which except in a case of emergency shall be of not less than five days.

- (iii) a river authority established under the Water Resources Act 1963, a drainage board constituted or treated as having been constituted under the Land Drainage Act 1930, The Conservators of the River Thames, or the Lee Conservancy Catchment Board, where the tree interferes or would interfere with the exercise of any of the functions of such river authority, drainage board, Conservators of the River Thames or Lee Conservancy Catchment Board in relation to the maintenance, improvement or construction of water courses or of drainage works; or
- (iv) the Minister of Defence for the Royal Air Force, the Minister of Technology or the Board of Trade where in the opinion of such Minister or Board the tree obstructs the approach of aircraft to, or their departure from, any aerodrome or hinders the safe and efficient use of aviation or defence technical installations;
- (c) where immediately required for the purposes of carrying out development authorised by the planning permission granted on an application made under Part III of the Act, or deemed to have been so granted for any of the purposes of that Part;
- (d) which is a fruit tree cultivated for fruit production growing or standing on land comprised in an orchard or garden.

THIRD SCHEDULE

Provisions of the following parts of (a) Part III of the Town and Country Planning Act 1962 and (b) section 80 of the Town and Country Planning Act 1968 as adapted and modified to apply to this Order.

- (a) PART III OF THE TOWN AND COUNTRY PLANNING ACT 1962
- 21. (1) Without prejudice to the following provisions as to the revocation or modification of consents, any consent under the Order, including any direction as to replanting given by the authority on the granting of such consent, shall (except in so far as the consent otherwise provides), enure for the benefit of the land and of all persons for the time being interested therein.
- 22. (1) The Minister may give directions to the authority requiring applications for consent under the Order to be referred to him instead of being dealt with by the authority.
 - (2) A direction under this section may relate either to a particular application or to applications of a class specified in the direction.
 - (3) Any application in respect of which a direction under this section has effect shall be referred to the Minister accordingly.
 - (4) Where an application for consent under the Order is referred to the Minister under this section, the provisions of Articles 4 and 5 of the Order shall apply as they apply to an application which falls to be determined by the authority.

- (5) Before determining an application referred to him under this section the Minister shall, if either the applicant or the authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.
- (6) The decision of the Minister on any application referred to him under this section shall be final.
23. (1) Where an application is made to the authority for consent under the Order and that consent is refused by that authority or is granted by them subject to conditions, or where any certificate or direction is given by the authority, the applicant if he is aggrieved by their decision on the application, or by any such certificate, or the person directed if he is aggrieved by the direction, may by notice under this section appeal to the Minister.
- (2) A notice under this section shall be served in writing within twenty-eight days from the receipt of notification of the decision, certificate or direction, as the case may be, or such longer period as the Minister may allow.
- (4) Where an appeal is brought under this section from a decision, certificate or direction of the authority, the Minister, subject to the following provisions of this section, may allow or dismiss the appeal, or may reverse or vary any part of the decision of the authority, whether the appeal relates to that part thereof or not, or may cancel any certificate or cancel or vary any direction, and may deal with the application as if it had been made to him in the first instance.
- (5) Before determining an appeal under this section, the Minister shall, if either the appellant or the authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.
- (7) The decision of the Minister on any appeal under this section shall be final.
24. Where an application for consent under the Order is made to the authority, then unless within two months from the date of receipt of the application, or within such extended period as may at any time be agreed upon in writing between the applicant and the authority, the authority either -
- (a) give notice to the applicant of their decision on the application; or
- (b) give notice to him that the application has been referred to the Minister in accordance with directions given under section 22 above;

the provisions of the last preceding section shall apply in relation to the application as if the consent to which it relates had been refused by the authority, and as if notification of their decision had been received by the applicant at the end of the said period of two months, or at the end of the said extended period, as the case may be.

27. (1) If it appears to the authority that it is expedient to revoke or modify any consent under the Order granted on an application made under Article 3 of the Order, the authority may by Order revoke or modify the consent to such extent as they consider expedient.

(2) (Subject to the provisions of section 16 of the Civic Amenities Act 1967 and section 80 of the Town and Country Planning Act 1968) an Order under this section shall not take effect unless it is confirmed by the Minister, and the Minister may confirm any such Order submitted to him either without modification or subject to such modifications as he considers expedient.

(3) Where an authority submit an Order to the Minister for his confirmation under this section, the authority shall furnish the Minister with a statement of their reason for making the Order and shall serve notice together with a copy of the aforesaid statement on the owner and on the occupier of the land affected, and on any other person who in their opinion will be affected by the Order, and if within the period of twenty-eight days from the service thereof any person on whom the notice is served so requires, the Minister, before confirming the Order shall afford to that person, and to the authority, an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.

(4) The power conferred by this section to revoke or modify a consent may be exercised at any time before the operations for which consent has been given have been completed:

Provided that the revocation or modification of consent shall not affect so much of those operations as has been previously carried out.

(5) Where a notice has been served in accordance with the provisions of subsection (3) of this section, no operations or further operations as the case may be, in pursuance of the consent granted, shall be carried out pending the decision of the Minister under subsection (2) of this section.

(b) TOWN AND COUNTRY PLANNING ACT 1968

80. (1) The following provisions shall have effect where the local planning authority have made an Order (hereinafter called "such Order") under section 27 above revoking or modifying any consent granted on an application made under a tree preservation order but have not submitted such Order to the Minister for confirmation by him and the owner and the occupier of the land and all persons who in the authority's opinion will be affected by such Order have notified the authority in writing that they do not object to such Order.

(2) The authority shall advertise the fact that such Order has been made and the advertisement shall specify (a) the period (not less than twenty-eight days from the date on which the advertisement first appears) within which persons affected by such Order may give notice to the Minister that they wish for an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose and (b) the period (not less than 14 days from the expiration of the period referred to in paragraph (a) above) at the expiration of which, if no such

notice is given to the Minister, such Order may take effect by virtue of this section and without being confirmed by the Minister.

(3) The authority shall also serve notices to the same effect on the persons mentioned in subsection (1) above.

(4) The authority shall send a copy of any advertisement published under subsection (2) above to the Minister, not more than three days after the publication.

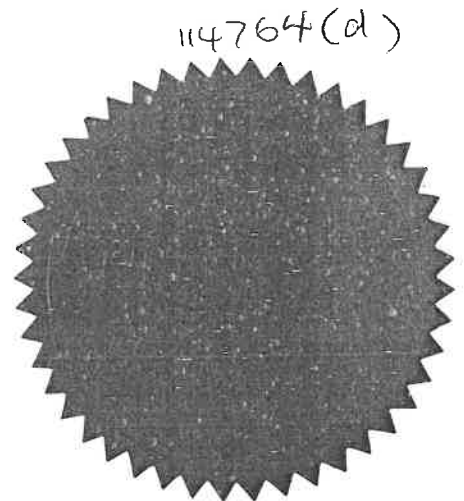
(5) If within the period referred to in subsection (2)(a) above no person claiming to be affected by such Order has given notice to the Minister as aforesaid and the Minister has not directed that such Order be submitted to him for confirmation, such Order shall at the expiration of the period referred to in subsection (2)(b) of this section take effect by virtue of this section and without being confirmed by the Minister as required by section 27(2) of the Town and Country Planning Act 1962.

(6) This section does not apply to such Order revoking or modifying a consent granted or deemed to have been granted by the Minister under Part III or Part IV of the Town and Country Planning Act 1962 or under Part II or Part V of the Town and Country Planning Act 1968.

The Common Seal of the
Leicestershire County Council was
hereunto affixed on the 26th
day of February One thousand
nine hundred and seventy four

in the presence of:-

Joan Jell
.....
Deputy Clerk of the County Council

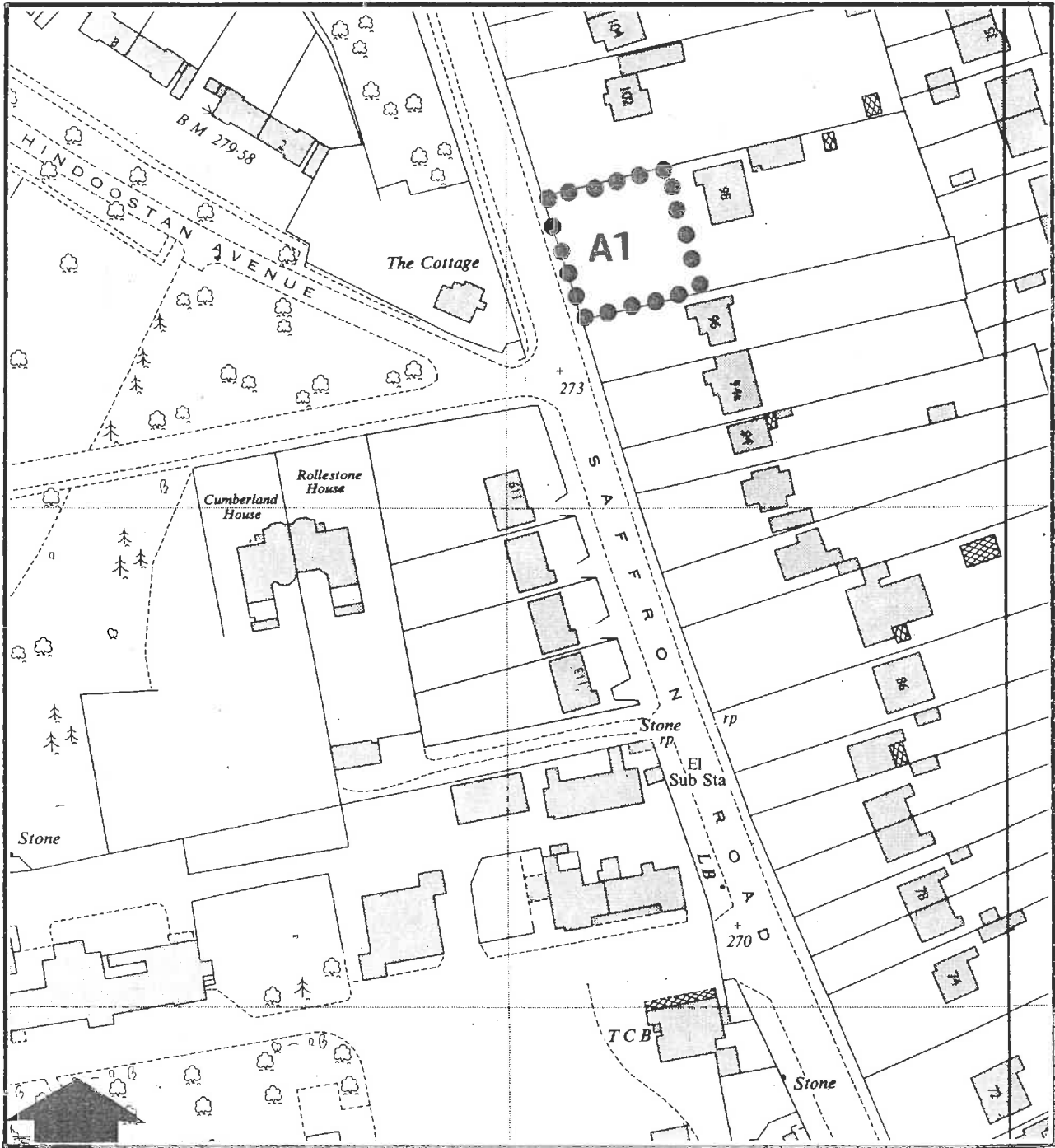


Town and Country Planning Act 1971

LEICESTERSHIRE COUNTY COUNCIL

WIGSTON (SAFFRON ROAD)

Tree Preservation Order 1974



Scale 1:1250

Extract SP 5898

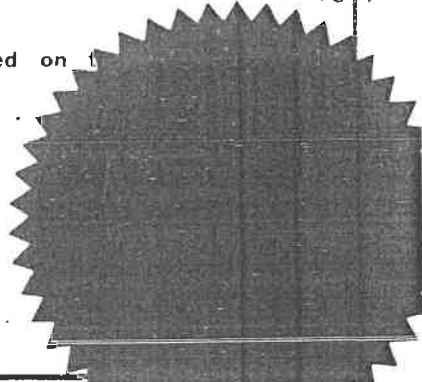
114764(6)

The Common Seal of the Leicestershire County Council was hereunto affixed on the

26th day of February

One thousand nine hundred and seventy four in the presence of :-

Joan Doe
Deputy Clerk of the County Council Page 65



Agenda Item 6e



Development Control Committee	Thursday, 30 August 2018	Matter for Decision
--	-------------------------------------	----------------------------

Report Title: **The Borough of Oadby and Wigston (19 Healey Street, Wigston) Tree Preservation Order 2018**

Report Author(s): **Michael Bennetto (Arboricultural Officer)**

Purpose of Report:	The purpose of this report is to seek a decision from the Committee to confirm or otherwise The Borough of Oadby and Wigston (19 Healey Street, Wigston) Tree Preservation Order 2018 ("the Order") which was made on 12 June 2018.
Report Summary:	The Order was created following an application for tree works in a Conservation Area. It was considered expedient to protect this tree from being felled as it provides amenity value to adjacent residents.
Recommendation(s):	That The Borough of Oadby and Wigston (19 Healey Street, Wigston) Tree Preservation Order 2018 be confirmed.
Responsible Strategic Director, Head of Service and Officer Contact(s):	<p>Anne Court (Chief Executive) (0116) 257 2606 anne.court1@oadby-wigston.gov.uk</p> <p>Adrian Thorpe (Head of Planning, Development and Regeneration) (0116) 257 2645 adrian.thorpe@oadby-wigston.gov.uk</p> <p>Michael Bennetto (Arboricultural Officer) (0116) 257 2697 michael.bennetto@oadby-wigston.gov.uk</p>
Corporate Priorities:	Balanced Economic Development (CP3) Green & Safe Places (CP4) Wellbeing for All (CP5)
Vision and Values:	Accountability (V1) Customer Focus (V5)
Report Implications:-	
Legal:	All legal requirements have been fulfilled and interested parties are to be informed of confirmation as soon as reasonably practicable.
Financial:	There are no implications directly arising from this report.
Corporate Risk Management:	No corporate risk(s) identified.
Equalities and Equalities Assessment (EA):	There are no implications arising from this report. EA not applicable.
Human Rights:	There may be implications under Articles 1 and 8 of the Protocol No. 1 to the European Convention on Human Rights regarding the

	right of respect for the peaceful enjoyment of possessions and a person's private and family life and home. However, these issues have been taken into account in the determination of this Order.
Health and Safety:	There are no implications arising from this report.
Statutory Officers' Comments:-	
Head of Paid Service:	The report is satisfactory.
Chief Finance Officer:	The report is satisfactory.
Monitoring Officer:	The report is satisfactory.
Consultees:	Insert narrative.
Background Papers:	Town and Country Planning Act 1990 Part VIII, Chapter I, Trees The Town and Country Planning (Tree Preservation)(England) Regulations 2012 Protocol No. 1 to the European Convention on Human Rights Planning Application No. 18/00226/TCA
Appendices:	1. TPO - 19 Healey Street, Wigston (Provisional)

1. Information

- 1.1 The Order was created following an application for tree works in a Conservation Area (application reference no. 18/00226/TCA).
- 1.2 The site is located within South Wigston Conservation Area. The application was to fell one Maidenhair/Ginkgo tree (*Ginkgo biloba*), a species less often planted, slow to establish and notable for being resistant to pests and diseases. The tree is still classed as young, appears to be good in form and condition with no defects evidenced within the application to shorten its safe useful life expectancy.
- 1.3 While it is a back garden tree and partially visible from the street, the nature of the terraced housing means that a large percentage of the residents benefit from the amenity that this tree provides and it is easily the largest tree within the gardens of Healey and Garden Street, Wigston.
- 1.4 On the 12 June 2018, Notices were served on interested parties in accordance with The Town and Country Planning (Tree Preservation)(England) Regulations 2012, Regulation 5.
- 1.5 A local tree warden is in support of the Order. No other representations have been made in support or objection.

2. Conclusions and Recommendation

- 2.1 The tree provides good amenity value to the area and has a good safe useful life expectancy with no apparent reason to suggest it cannot continue to be kept in good form and condition.
- 2.2 It is recommended that the Order be confirmed.

Town and Country Planning Act 1990

The Borough Council of Oadby & Wigston (19 Healey Street, Wigston) Tree Preservation Order 2018

The Borough Council of Oadby & Wigston, in exercise of the powers conferred on them by sections 198 of the Town and Country Planning Act 1990 hereby make the following Order:-

Citation

1. This Order may be cited as The Borough Council of Oadby & Wigston (19 Healey Street, Wigston), Tree Preservation Order 11 June 2018-

Interpretation

2. (1) In this Order "the authority" means the Borough Council of Oadby and Wigston unless the context otherwise requires.
(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

Effect

3. (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.
(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to article 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 in the Schedule of this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this **11** day of **JUNE** 20**18**.

The Common Seal of the Borough Council of Oadby and Wigston was hereunto affixed in the presence of:-

D.M. Carter
(Mayor)

J.M. Gill
(Head of Law & Governance)



CONFIRMATION OF ORDER

This Order was confirmed by the Oadby and Wigston Borough Council at its meeting of the Development Control Committee without modification on the day of 20 .

Minute Reference:

CONFIRMATION OF ORDER SUBJECT TO MODIFICATION

This Order was confirmed by the Oadby and Wigston Borough Council at its meeting of the Development Control Committee, on the day of 201 , subject to the following modifications:

Minute Reference:

DECISION NOT TO CONFIRM ORDER

A decision not to confirm this Order was taken by Oadby and Wigston Borough Council at its meeting of the Development Control Committee on the day of 201 .

Minute Reference:

DECISION TO VARY ORDER

A decision to vary this Order was taken by Oadby and Wigston Borough Council at its meeting of the Development Control Committee on the day of 201 .

Minute Reference:

DECISION TO REVOKE ORDER

A decision to revoke this Order was taken by Oadby and Wigston Borough Council at its meeting of the Development Control Committee on the day of 201 .

Minute Reference:

SCHEDULE

SPECIFICATION OF TREES

Trees specified Individually (encircled in black on the map)

Reference on map	Description	Situation
T1	Ginkgo biloba	Within rear garden of 19 Healey Street, South Wigston

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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The Borough Council of Oadby & Wigston (19 Healey Street, Wigston) Tree Preservation Order 2018

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Scale 1:500

Date 08/06/2018





Development Control Committee	Thursday, 30 August 2018	Matter for Decision
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Report Title: **The Borough of Oadby and Wigston (45 Woodfield Road, Oadby) Tree Preservation Order 2018**

Report Author(s): **Michael Bennetto (Arboricultural Officer)**

Purpose of Report:	The purpose of this report is to seek a decision from the Committee to confirm or otherwise The Borough of Oadby and Wigston (45 Woodfield Road, Oadby) Tree Preservation Order 2018 ("the Order") which was made on the 12 June 2018.
Report Summary:	The Order was created following a request from a Planning Officer in response to a planning application whereby the design of the building and the aspect of feature windows would give rise to considerable pressure for its future removal.
Recommendation(s):	That The Borough of Oadby and Wigston (45 Woodfield Road, Oadby) Tree Preservation Order 2018 be confirmed.
Responsible Strategic Director, Head of Service and Officer Contact(s):	<p>Anne Court (Chief Executive) (0116) 257 2606 anne.court1@oadby-wigston.gov.uk</p> <p>Adrian Thorpe (Head of Planning, Development and Regeneration) (0116) 257 2645 adrian.thorpe@oadby-wigston.gov.uk</p> <p>Michael Bennetto (Arboricultural Officer) (0116) 257 2697 michael.bennetto@oadby-wigston.gov.uk</p>
Corporate Priorities:	Balanced Economic Development (CP3) Green & Safe Places (CP4) Wellbeing for All (CP5)
Vision and Values:	Accountability (V1) Customer Focus (V5)
Report Implications:-	
Legal:	All legal requirements have been fulfilled and interested parties are to be informed of confirmation as soon as reasonably practicable.
Financial:	There are no implications directly arising from this report.
Corporate Risk Management:	No corporate risk(s) identified.
Equalities and Equalities Assessment (EA):	There are no implications arising from this report. EA not applicable.
Human Rights:	There may be implications under Articles 1 and 8 of the Protocol

	No. 1 to the European Convention on Human Rights regarding the right of respect for the peaceful enjoyment of possessions and a person's private and family life and home. However, these issues have been taken into account in the determination of this Order.
Health and Safety:	There are no implications arising from this report.
Statutory Officers' Comments:-	
Head of Paid Service:	The report is satisfactory.
Chief Finance Officer:	The report is satisfactory.
Monitoring Officer:	The report is satisfactory.
Consultees:	All persons interested in the land affected by the Order.
Background Papers:	Town and Country Planning Act 1990 Part VIII, Chapter I, Trees The Town and Country Planning (Tree Preservation)(England) Regulations 2012 Planning Application No. 18/00221/FUL Protocol No. 1 to the European Convention on Human Rights
Appendices:	1. TPO - Land at 45 Woodfield Road, Oadby (Provisional)

1. Information

- 1.1 The Order was created following a request from a Planning Officer in response to a planning application (application reference no. 18/00221/FUL). Within the application, the tree is to be retained, however due to the design of the building and the aspect of feature windows there would be considerable pressure for its future removal.
- 1.2 The tree is located within the front garden of no. 45 Woodfield Road, Oadby, in a prominent position nicely situated opposite the junction for Holme Drive, Oadby.
- 1.3 The tree is a middle aged silver birch (*Betula pendula*) which presents as having been well maintained, with a clear single stem and even branch structure. It has been sympathetically reduced several times leading to the formation of small 'knuckles' at the points of reduction.
- 1.4 The tree provides good amenity to local residents and is appropriate for the location
- 1.5 On 12 June 2018, Notices were served on interested parties in accordance with The Town and Country Planning (Tree Preservation)(England) Regulations 2012, Regulation 5.
- 1.6 No representations were made in support or objection of the Order within the timeframe under Regulation 6.

2. Conclusions and Recommendation

- 2.1 The tree provides good amenity value to the area and has a good safe useful life expectancy with no apparent reason to suggest it cannot continue to be kept in good form and condition.
- 2.2 It is recommended that the Order be confirmed.

Town and Country Planning Act 1990

The Borough Council of Oadby & Wigston (45 Woodfield Road, Oadby) Tree Preservation Order 2018

The Borough Council of Oadby & Wigston, in exercise of the powers conferred on them by sections 198 of the Town and Country Planning Act 1990 hereby make the following Order:-

Citation

1. This Order may be cited as The Borough Council of Oadby & Wigston (45 Woodfield Road, Oadby), Tree Preservation Order 20 June 2018

Interpretation

2. (1) In this Order "the authority" means the Borough Council of Oadby and Wigston unless the context otherwise requires.
(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

Effect

3. (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.
(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to article 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 in the Schedule of this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 20 day of JUNE 2018.

The Common Seal of the Borough Council of Oadby and Wigston was hereunto affixed in the presence of:-

D.M. Carter

(Mayor)

D. Mellor

(Head of Law & Governance)



CONFIRMATION OF ORDER

This Order was confirmed by the Oadby and Wigston Borough Council at its meeting of the Development Control Committee without modification on the day of 20 .

Minute Reference:

CONFIRMATION OF ORDER SUBJECT TO MODIFICATION

This Order was confirmed by the Oadby and Wigston Borough Council at its meeting of the Development Control Committee, on the day of 201 , subject to the following modifications:

Minute Reference:

DECISION NOT TO CONFIRM ORDER

A decision not to confirm this Order was taken by Oadby and Wigston Borough Council at its meeting of the Development Control Committee on the day of 201 .

Minute Reference:

DECISION TO VARY ORDER

A decision to vary this Order was taken by Oadby and Wigston Borough Council at its meeting of the Development Control Committee on the day of 201 .

Minute Reference:

DECISION TO REVOKE ORDER

A decision to revoke this Order was taken by Oadby and Wigston Borough Council at its meeting of the Development Control Committee on the day of 201 .

Minute Reference:

SCHEDULE

SPECIFICATION OF TREES

Trees specified Individually (encircled in black on the map)

Reference on map	Description	Situation
T1	Birch	Within front garden of 45 Woodfield Road

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

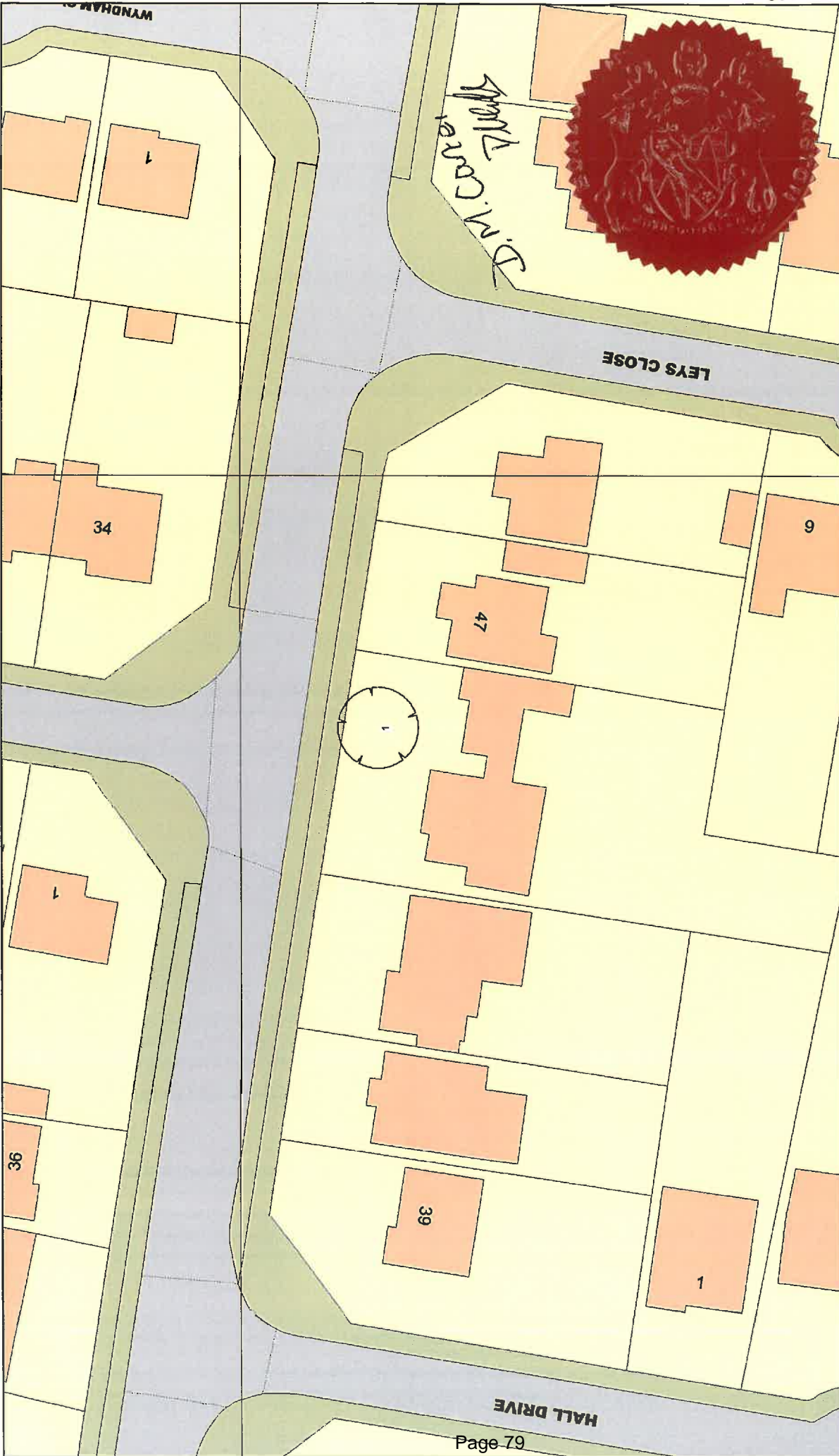
Reference on map	Description	Situation
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Groups of Trees (within a broken black line on the map)

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

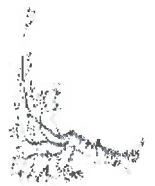
Reference on map	Description	Situation
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Scale	1:500
Date	18/06/2018

The Borough Council of Oadby & Wigston (45 Woodfield Road) Tree Preservation Order 2018

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Agenda Item 7

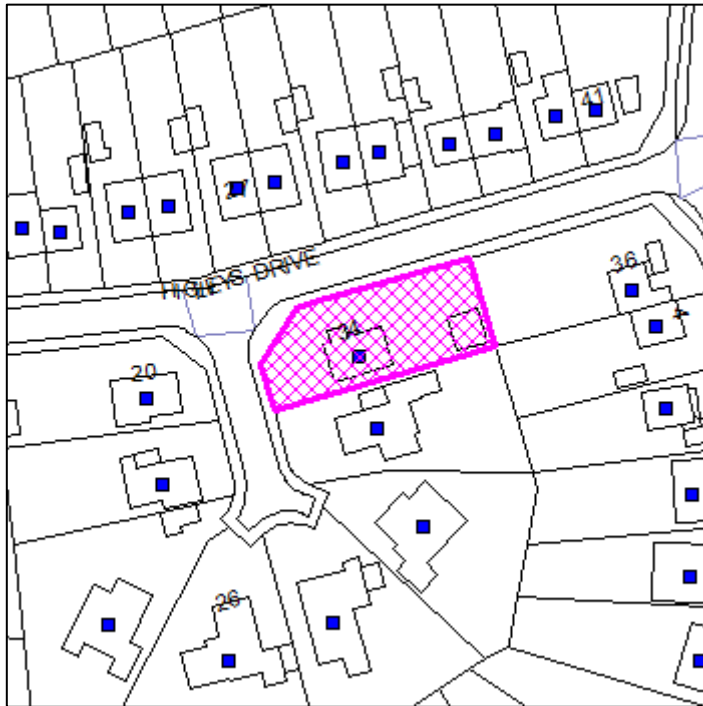
Application Number

Address

Report Items

- | | |
|------------------------|---|
| A. 18/00279/FUL | 34 High Leys Drive
Oadby
Leicestershire
LE2 5TL |
| B. 18/00284/FUL | 36 Marstown Avenue
Wigston
Leicestershire
LE18 4UH |
| C. 18/00317/FUL | Pavilion
Horsewell Lane
Wigston
Leicestershire |

a.	18/00279/FUL	34 High Leys Drive Oadby Leicestershire LE2 5TL
	12 June 2018	Single storey side extension, demolition of existing garage and replace with new garage
	Case Officer	Tony Boswell



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Published 2014

Site and Location

34 High Leys Drive is a single storey gable ended bungalow on a corner location within High Leys Drive. It, therefore, has a long return frontage and on that frontage there is currently a double garage with two additional car spaces on the same frontage. Both the frontages are largely enclosed by a circa 1.8 metre high hedge. High Leys Drive as a whole is characterised by a number of bungalows of similar appearance, although in more typical "street" layout.

At present the garden to number 34 is largely enclosed by the hedge and so much of that garden in-front of the building is normally used as functional garden – rather than the more usual "front" and "rear" garden arrangement.

The adjacent number 32 is very similar to number 34, and is separated from the boundary with number 34 by a covered and partially enclosed driveway.

Description of proposal

The proposal is to demolish the existing double garage and replace it with a single garage with a further off-street parking space in front.

The existing pitched roofed bungalow would be extended in a linear manner so that its overall length is increased from its current 12.3 metres to 21.7 metres. This would leave a gap of 3.34 metres between the flank wall of the enlarged bungalow and the new single garage. The external materials are stated to be to match those of the existing building.

Like the existing bungalow the proposed extension would be only some 1600 mm from the party boundary with the adjacent number 32 High Leys Drive. The extension would include one high level window in semi-obscured glazing. An additional and similar window would also be inserted into the flank wall of the existing bungalow.

The statutory determination period for this application expires on the 7 August 2018 and it is intended to issue a decision as soon as practicably possible after the Committee meeting.

Relevant Planning History

18/00138/FUL – Single Storey Side Extension to Bungalow – refused on the 29 May 2018 for the following reason:

High Leys Drive is an area of distinctive local character largely comprising modest sized bungalows and gardens. In contrast the scale of the proposed enlargements to number 34 amounts to a gross overdevelopment of its site. This would be unacceptable and objectionable for a number of reasons which include but are not confined to:

- * The total loss of off-street car parking capacity following demolition of the existing double garage. Not less than 3 such spaces would be required to serve the enlarged four bedroom home as proposed.*
- * By virtue of its scale and form the proposed extension would not appear subordinate to the pre-existing bungalow.*
- * Six new windows are proposed only 1650 mm away from the rear garden of the adjacent bungalow. However fenestrated or screened, those windows would threaten the actual and perceived privacy of that adjacent garden.*
- * The residual front garden to High Leys Drive would not be adequate to serve the recreational and functional needs of future households of the enlarged home, and its use would erode the*

character and appearance of the street concerned. (Functions such as the external drying of laundry).

The proposal would therefore be contrary to national planning policy in paragraphs 53, 58, 60 and 64 of the National Planning Policy Framework; policies Core Strategy 14 and Core Strategy 15 of the Oadby and Wigston Core Strategy and policies Landscape Proposal 1 and Housing Proposal 17 of the saved Oadby and Wigston Local Plan.

Consultations

None sought, although prompted by the Council's weekly list LCC Ecology requested a bat survey to establish the possibility that the existing bungalow might provide a habitat for bats.

Representations

Twelve near neighbours notified by direct mail on the 14 June 2018 and a site notice posted on the 25 June 2018. The date for the receipt of comments expired on the 16 July 2018. A single objection has been received from the immediate neighbour at 32 High Leys Drive which reads:

"I am writing to object to the above application. This new application is still doubling the size of the existing bungalow, this will impact just as much as the previous application"

Councillor Jeffrey Kaufman has also made representations on the application as he believes the proposal to be an overdevelopment of the site.

Relevant Planning Policies

National Planning Policy Framework (July 2018)

Oadby & Wigston Core Strategy

Core Strategy Policy 14 : Design and Construction

Core Strategy Policy 15 : Landscape and Character

Oadby and Wigston Local Plan

Landscape Proposal 1 : Design of new development subject to criteria.

Housing Proposal 17 : Criteria for assessing the suitability of domestic extensions.

Supplementary Planning Document/Other Guidance

Residential Development Supplementary Planning Document

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
- * The impact of the proposal on neighbouring residential properties.

The impact of the proposal on the street scene

Although the size of the proposed extension would near double the size of the existing bungalow, its visual scale would be largely indistinguishable from that of its near neighbours in that it is to be behind the existing front boundary hedge. Saved Local Plan Housing Proposal 17 requires extensions to be "subordinate to the main building and of harmonious design, form and materials".

Given the unusual corner location and its configuration to the street, officers do not see a conflict with that policy objective.

The enlarged bungalow would have three bedrooms and the proposed two off-street parking spaces would meet the car parking standards for that size of dwelling.

The impact of the proposal on neighbouring residential properties.

The only neighbour that would be directly affected would be the adjacent number 32 High Leys Drive. Number 32 has a wide sideway and car port, the rear portion of which derives much of its light from over the currently vacant garden of number 34 adjacent. In as much as the proposed extension would not affect the habitable accommodation of number 32 then the impact of the proposed extension is not seen as warranting refusal of permission.

Conclusion

Subject to receipt of a negative survey for the presence of bats at the premises prior to the date of this Committee - Largely un-objectionable and supportable, subject to compliance with the conditions recommended below, and any conditions or informatives requested in relation to both.

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	No Significant implications

Recommendation

For the reasons set out in the above report then **PERMIT** subject to the following conditions:

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91 (1) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 All external materials used in the development shall match those of the existing building in colour, size, coursing and texture unless otherwise first agreed in writing with the Local Planning Authority.
Reason: To safeguard the character and appearance of the building and its surroundings and in accordance with the aims and objectives of the National Planning Policy Framework, Core Strategy Policy 14, and Landscape Proposal 1 of the Oadby and Wigston Local Plan.
- 3 Unless otherwise first approved in writing (by means of a Non-material Amendment/Minor Material Amendment or a new Planning Permission) by the Local Planning Authority the development hereby permitted shall be carried out in accordance with the approved plans and particulars listed in the schedule below.

Master Plans drawing "Existing and Proposed Plans" dated 07.08.2018, as supplied to the Council by e-mail on that date.

Reason: For the avoidance of doubt as to what is permitted by this permission and in the interests of proper planning.

- 4 The ground floor windows on the south elevation shall be fitted with obscure glass and shall be of a non-opening design up to a minimum height of 1.7 metres above the internal finished floor level. The windows shall not be replaced or altered without the prior written permission of the Local Planning Authority.

Reason: To safeguard the privacy of occupiers of the adjoining property and in accordance with Landscape Proposal 1 and Housing Proposal 17 of the Oadby and Wigston Local Plan.

- 5 The proposed garage and frontage car parking space shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 34 High Leys Drive, LE2 5TL.

Reason: To ensure that the proposed development is compatible with existing development in the locality and in accordance with Core Strategy Policy 14 and Landscape Proposal 1 of the Oadby and Wigston Local Plan.

Note(s) to Applicant :

- 1 In dealing with the application, through ongoing negotiation the local planning authority have worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with the planning application and this has resulted in the approval of the application. The Local Planning Authority has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the National Planning Policy Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Appeals to the Secretary of State

If you are aggrieved by the decision of your local planning authority for the proposed development 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 12 weeks of the date of this 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-planning-inspectorate

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

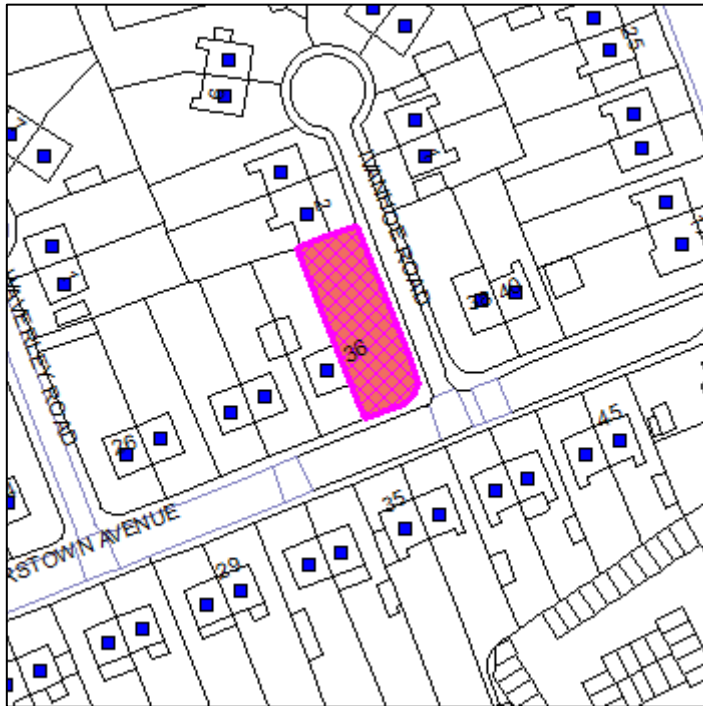
The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

Purchase Notices

If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the Council (District Council, London Borough Council or Common Council of the City of London) in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

b.	18/00284/FUL	36 Marstown Avenue Wigston Leicestershire LE18 4UH
	19 June 2018	Two storey side extension to form an additional 3 bedroom dwelling
	Case Officer	Mrs Tracey Carey



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Published 2014

Site and Location

The site is located in a primarily residential area characterised predominantly by semi-detached two storey dwellings. The property is one half of a semi-detached property previously extended by a two storey and single storey extension to the rear with a detached garage to the side, located on the corner of Marstown Avenue and Ivanhoe Road.

Description of proposal

The application is for a two storey side extension to form a separate 3 bedroom dwelling with its own front/rear garden areas and a driveway to the rear, accessed off Ivanhoe Road.

The dwelling measures 4.7m wide x 10.4m long along the back of the footpath and in line with the existing two storey rear extension. The dwelling has a hipped roof and will be rendered to match the existing dwelling.

The statutory determination period for this application expired on the 14 August 2018 and it is intended to issue a decision as soon as practicably possible after the committee meeting.

Relevant Planning History

82/00191/8M – Two storey rear extension – Approved 15 April 1982

88/00242/8M – Single storey rear extension – Approved 19 April 1988

Consultations

OWBC Planning Policy – Incorporated within the report.

Representations

Neighbours have been informed and a site notice placed with 7 letters of representation and a petition signed by 38 people objecting to the proposal being received at the time of writing this report. The date for the receipt of comments expired on the 19 July 2018.

The reasons for objection can be summarised as follows: -

- Overdevelopment – piece of land unsuitable to accommodate an additional dwelling;
- Devaluation of existing property due to loss of rear access and reduction in size of plot;
- Out of character - will change existing house from a semi to a mid-terrace;
- Insufficient garden area;
- Loss of views;
- Add to the noise levels and could create friction;
- New access onto Ivanhoe Road, there is already a problem with parking on Ivanhoe Road due to double yellow lines;
- will only have one parking space, new builds with three bedrooms should have 2 parking spaces
- Will not fit in with existing street layout;
- Set a precedent for similar developments;
- Already doing works on existing property;
- Loss of light;
- Noise and fumes from new driveway adjacent to my bedroom/living room;
- New driveway will be easy access for intruders;
- Will gain a new neighbour along my side boundary, concerns over noise levels as will use garden a lot due to limited indoor space;

- Devaluation of neighbouring properties;
- Ruin the look of the street;
- Not enough information on the design;
- Extra demands on schools, doctors, services
- The property already has a single and two storey extension – is there a need for more?
- If this is allowed, I would ask why we weren't allowed a side extension 7 years ago on an identical plot.
- is it the intention to sell both properties or is it buy to rent? If the second is the case what conditions will be stipulated to prevent multi-occupancy? This would significantly affect parking on Marstown Avenue and make access for emergency vehicles even more difficult

The application has been brought to Committee at the request of Councillor Mrs Morris.

Relevant Planning Policies

National Planning Policy Framework

Oadby & Wigston Core Strategy

Core Strategy Policy 4 : Sustainable Transport and Accessibility

Core Strategy Policy 14 : Design and Construction

Oadby and Wigston Local Plan

Landscape Proposal 1 : Design of new development subject to criteria.

Housing Proposal 13 : Infill Development

Housing Proposal 17 : Criteria for assessing the suitability of domestic extensions.

Emerging Local Plan

Policy 15 : Urban Infill Development

Policy 44 : Landscape and Character

Supplementary Planning Document/Other Guidance

Residential Development Supplementary Planning Document

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
- * The impact of the proposal on neighbouring residential properties.

The impact of the proposal on the street scene

Core Strategy Policy 14: Design and Construction, requires all new development proposals to have high quality inclusive design that respects local character, patterns of development and is sympathetic to its surroundings and should contribute to creating buildings and places that are attractive with their own distinct identity.

Core Strategy Policy 15 Landscape and Character states that all development proposals will be considered against the need to protect and enhance the distinctive landscape and historic character of the Borough. They should reflect the prevailing quality, character and features such as settlement pattern, views, biodiversity and local distinctiveness.

Landscape Proposal 1 of the Saved Local Plan states that: Development will be permitted provided that ... (2) the building design, scale, form and materials will contribute positively to the overall quality of the environment and be carefully related to existing development.

Housing Proposal 13 states that: Planning permission will not be approved for infill residential development unless (1) the development proposed would not have an adverse impact on the character of the area and (2) the design of the development would not have an adverse effects on the amenities of adjacent of nearby properties.

Housing Proposal 17 of the Saved Local Plan states that: The Local Planning Authority will not grant planning permission for the erection of extensions ... within the curtilage of residential properties unless (1) the extension is subordinate to the main building and of harmonious design, form and materials; and (2) the development does not have an unacceptably adverse effect on the visual amenities of the area.

The Submission Draft Local Plan, Policy 6, High Quality Design and Materials states that: 'The Council will require the highest standards of inclusive design and use of the highest quality materials for all new development and major refurbishment in the Borough.

Proposals for new development and major refurbishment should create a distinctive environment by;

- respecting the existing local and historic character;
- ensuring patterns of development are sympathetic to their surroundings.'

The Submission Draft Local Plan, Policy 15, Urban Infill Development states that:

'Any proposal for development on residential garden land or any other open amenity space around buildings will not be permitted unless it conforms to the guidance set out within the Council's Landscape Character Assessment.

Proposals that seek to split existing residential plots and propose development on the garden land of and / or open amenity space of existing plots will not be granted planning permission unless the proposal sits comfortably, is consistent with, in character with, and respects the direct existing street scene in which it is situated. The Council will not accept development proposals that 'over develop' a site from its original intended or existing use.

The Submission Draft Local Plan, Policy 44 Landscape and Character states that:

'All development proposals within the Borough will be considered against the need to conserve and enhance the distinctive landscapes in the Borough. The Council will seek to ensure that all development proposals reflect the prevailing quality, character and features such as settlement patterns, important views, open spaces and significant natural habitats.

Development proposals will only be permitted where it is in keeping with the area in which it is situated.

Development proposals that are contrary to the policy guidance as set out within the Council's Landscape Character Assessment, the Conservation Areas Supplementary Planning Document and / or the Conservation Area Appraisals will not be approved.'

The site is located within Landscape Urban Character Area SW(i): South Wigston North of Gloucester Crescent. Policy Guidance SW(i)/1, Infill development states that:

'This urban area shows very little capacity of additional built development (except for comprehensive renewals) without the loss of the very few areas of open space within it, or erosion of the grain of the estate. The housing density is already relatively high in the southern area and the slightly larger plot size to its northern streets important to its character. The character of the area is weak, but defined nevertheless by a pleasant order, repetition, predictability and common but simple building design. Further development of a residential nature within this area would be likely to disrupt this, and serve little in terms of meeting additional housing provision and should be discounted. Comprehensive residential renewal would change the character of the area by removing its repetition, predictability and common but simple design in particular.'

In addition, the Council's Residential Development Supplementary Planning Document (2005) states "side extensions to corner plots effectively become front extensions and ultimately can have a major impact upon the appearance of the street scene. It is for this reason that they are often deemed unacceptable. Existing building lines of development should be respected."

The site occupies a prominent position on the corner of Marstown Avenue and Ivanhoe Road. There is currently an established building line to the north in Ivanhoe Road with dwellings being set back by at least 4.5m. The development as proposed by reason of its siting and width would project beyond this established building line by around 4.5m and given its corner position would appear particularly prominent when entering and exiting Ivanhoe Road. The impact of which would be exacerbated by the siting hard on the back of the footpath for a length of in excess of 10m.

It is, therefore, considered that the side extension would result in an unduly obtrusive extension detrimental to the visual amenity of the street scene and surrounding area.

In addition, the existing dwelling is of a reflective nature with regards to the adjoining property and is similar in terms of design, character and appearance to the other surrounding properties in the surrounding area. The proposed extension by reason of its full height and width would not appear subordinate to the existing dwelling and would unbalance the pair of semi-detached properties to an unacceptable degree. For these reasons the proposal would fail to achieve a harmonious visual effect to the detriment of the existing dwelling and the street scene.

The existing plot measures around 280sq.m consistent with the current character of the area which includes plots in excess of 200sq.m and garden areas ranging from 80sq.m to in excess of 150sq.m. The current plot has a rear garden area of around 137sq.m. The subdivision of the plot as proposed would result in the host property retaining a plot of around 174sq.m and a rear garden area of 70sq.m. (approx.) The new plot would be 126sq.m (approx.) with a garden area of around 37sq.m. This demonstrates that the subdivided plots would be smaller than those in the surrounding area and would have small gardens uncharacteristic for the area, generally.

As such the proposal is contrary to the above policies and the adopted Residential Development Supplementary Planning Document.

The impact of the proposal on neighbouring residential properties.

Due to the siting of the proposal in relation to the neighbouring properties it is not considered that the proposal will significantly impact on the amenities of neighbouring properties.

Other Matters

Highway/Access

The Highway Authority's standing advice requires a minimum of two spaces for dwellings with 3 bedrooms.

Whilst the proposal removes the existing garage the plans submitted show the two spaces required in the front garden area of the existing property and a new access. A new access is proposed off Ivanhoe Road to serve a driveway for the new dwelling to accommodate one vehicle. This falls short of the two required and could result in vehicles parking in the highway which in this corner location could impact on the safe and efficient use of the highway, detrimental to highway safety.

It should be noted however that the installation of the new accesses constitutes permitted development.

Reference has been made within the representations that similar applications in similar locations have previously been refused. I am unable to find any refusals to this effect however it is noted that a similar scheme was withdrawn at a neighbouring site in 2010.

Conclusion

The proposed extension required to accommodate a new dwelling would result in an unduly obtrusive form of development detrimental to the visual amenity of the street scene and surrounding area. Furthermore, the subdivision of the plot would be out of keeping with the existing developments detrimental to the character and appearance of the surrounding area.

In addition, only one on-site parking space will be provided resulting in a short fall in provision below required standards resulting in the potential for increased on-street parking provision which due to the sites corner location may adversely impact upon highway and pedestrian safety.

In view of the above it is therefore recommended that planning permission be refused.

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	No Significant implications

Recommendation

For the reasons set out in the above report then **REFUSE** for the following reasons:

- 1 The site occupies a prominent corner position and the proposed mass and siting of the two storey extension would result in an unduly dominant extension in relation to the existing dwelling and the street scene and would be out of keeping with the general arrangement of dwellings along Ivanhoe Road which tend to follow a regular building line. The impact of the proposal would be exacerbated by the siting of the extension on the back of the footpath. The proposal is therefore contrary to the aims and objectives of the National Planning Policy Framework, Oadby & Wigston Core Strategy Policies 14 & 15 and Landscape Proposal 1 and Housing Proposals 13 and 17 of the Oadby and Wigston Local Plan and the Residential Development Supplementary Planning Document.
- 2 The application site is located within South Wigston North or Gloucester Crescent Urban Character Area which is characterised by medium sized dwellings in regular plots with modest back gardens. The subdivision of the plot as proposed, because of its restricted size would lead to a development out of keeping with the established scale and character of the area to the detriment of the street scene and the visual quality of the area in general, contrary to the aims and objectives of the National Planning Policy Framework, policies CS14 and CS15 of the Oadby and Wigston Borough Council Core Strategy, policies LP1 and H13 of the Oadby and Wigston Borough Council Local Plan and the Oadby and Wigston Landscape Character Assessment.
- 3 Policy 4, Sustainable Transport & Accessibility, of the Oadby & Wigston Core Strategy states that development should be designed to enhance the safety of pedestrians and road users. The applicant is proposing to extend the existing dwelling to provide a separate 3 bedroom property, which requires a minimum of x2 off-street car parking spaces. The car parking provision proposed for the new dwelling is considered by the Local Planning Authority to be inadequate and insufficient in meeting this required standard for this property. The proposed scheme would lead to an increased level of on-street parking provision which due to the sites corner location may adversely impact upon highway and pedestrian safety contrary to Policy 4 of the Oadby & Wigston Core Strategy.

Note(s) to Applicant :

- 1 For the avoidance of doubt this decision relates to the following plans and particulars:-

Location Plan submitted to and received by the Local Planning Authority on 15 June 2018
Block Plan submitted to and received by the Local Planning Authority on 15 June 2018
Proposed First Floor Layout and Elevations, submitted to and received by the Local Planning Authority on 15 June 2018
Proposed Ground Floor Layout, submitted to and received by the Local Planning Authority on 15 June 2018

Appeals to the Secretary of State

If you are aggrieved by the decision of your local planning authority for the proposed development 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 6 months of the date of this notice.

**Development Control Committee Meeting
30 August 2018**

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-planning-inspectorate

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

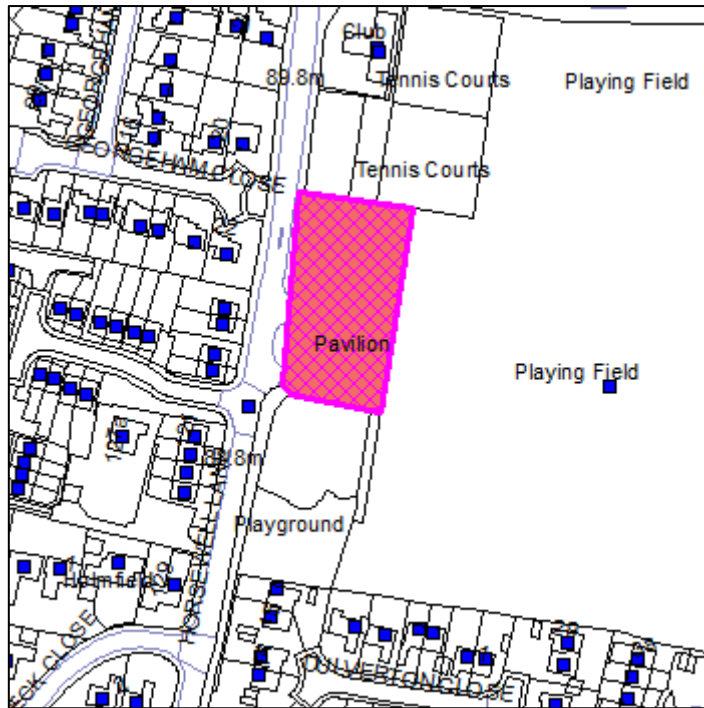
The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

Purchase Notices

If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the Council (District Council, London Borough Council or Common Council of the City of London) in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

c.	18/00317/FUL	Pavilion Horsewell Lane Wigston Leicestershire
	17 July 2018	Demolition of existing sports pavilion and construction of new community and sports pavilion and associated parking
	Case Officer	Mrs Tracey Carey



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Published 2014

Site and Location

The site is located within a predominantly residential area accessed off the main distributor road serving the Little Hill Estate. The site currently comprises a wooden single storey flat roofed Pavilion building with a large tarmacked car parking area to the front and side. Immediately north of the site is the Tennis Club and Boys Club buildings, to the west is the recreation ground associated with the Pavilion, with the Play area to the south and residential development to the east. The site has two accesses onto Horsewell Lane.

Description of proposal

The application is for the erection of a new pavilion to replace the existing building. The building measures 11.3m deep x 28.2m wide with a hipped roof approximately 5m high (max) and will be constructed in a mixture of brick and timber cladding with a tile effect roof. The building will be sited against the northern boundary of the site with car parking laid out across the remainder of the site. Car parking comprises of 34 car parking spaces, 2 motorcycle spaces, 4 disabled parking spaces, 2 Mini-bus spaces and 8 cycle spaces.

The new pavilion will replace the existing building and provide a community facility for similar activities and services including changing facilities for local sports clubs, a nursery for pre-school and a general purpose space available for hire. In addition, it is envisaged that the building will be offered out for hire for meetings utilising the new meeting room and functions within the main hall.

The statutory determination period for this application expires on the 11 September 2018 and it is intended to issue a decision as soon as practicably possible after the Committee meeting.

Relevant Planning History

None Relevant

Consultations

Leicestershire County Council (Highways) – No comments received at the time of writing this report.

OWBC – Environmental Health - No comments received at the time of writing this report.

OWBC – Planning Policy – Incorporated into the report.

Representations

Neighbours have been informed and a press/site notice placed with one letter in support being received at the time of writing this report. The date for the receipt of comments expired on the 16 August 2018.

The reasons for supporting the proposal can be summarised as follows:

- * We are happy with the application and would hope that the youth club blue tin building is demolished on completion of the pavilion. As it is close to the tennis club can we request new paving slabs to the entrance gate and a new security gate to the tennis club in keeping with the new proposed gate. Please also confirm that the clothes bank will be removed as it has become a fly tipping paradise. It looks like new tarmac surfacing is proposed which will definitely assist as a deterrent.

Relevant Planning Policies

National Planning Policy Framework (new) (NPPF)

Oadby & Wigston Core Strategy

Core Strategy Policy 4	:	Sustainable Transport and Accessibility
Core Strategy Policy 14	:	Design and Construction
Core Strategy Policy 17	:	Open Space and Facilities for Leisure, Recreation and Tourism.

Oadby and Wigston Local Plan

Landscape Proposal 1	:	Design of new development subject to criteria.
Housing Proposal 17	:	Criteria for assessing the suitability of domestic extensions.

Emerging Local Plan

Policy 6	:	High Quality Design and Materials
Policy 9	:	Open Space, Sport and Recreation Facilities

Planning Considerations

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

- * Principle of development
- * The impact of the proposal on the street scene
- * The impact of the proposal on neighbouring residential properties

Principle of development

The current sports pavilion building is dated and near its 'end of life'. Due to its age and condition, the building is underused. In addition, the Council's Playing Pitch Strategy (2018) highlights the proposed demolition of the existing building and erection of a replacement, as a short term (priority) project.

Paragraph 91 of the (new) NPPF suggests that planning decisions should aim to achieve healthy, inclusive and safe places which...promote social interaction...are safe and accessible...and support healthy lifestyles. Paragraph 92 goes on to say that decisions should plan positively for the provision and use of shared spaces and community facilities.

NPPF paragraph 97 states that existing sports and recreational buildings and land should not be built on unless, the resulting loss from the proposed development would be replaced by the equivalent or better provision in terms of quantity and quality.

Submission draft Local Plan Policy 9 – Open Space, Sport and Recreation Facilities supports the NPPF wording by suggesting that existing open space, sport and recreational buildings should not be built on unless the loss can be replaced by the equivalent or better provision.

Taking account of the above, the principle of demolition of the existing building and erection of a new improved sports and community use building is acceptable.

The impact of the proposal on the street scene

Core Strategy Policy 14 – Design and Construction states that the Council will require high quality inclusive design for all new development and major refurbishment in the Borough.

Core Strategy Policy 15 – Landscape and Character suggests that all development proposals will be considered against the need to protect and enhance the distinctive landscape character of the Borough.

Submission draft Local Plan Policy 6 – High Quality Design and Materials states that the Council will require high standards of inclusive design and use of high quality building materials.

Submission draft Local Plan Policy 44 – Landscape and Character states that all development proposals within the Borough will be considered against the need to conserve and enhance the distinctive landscapes in the Borough. The policy goes on to suggest that the Council will seek to ensure that all development proposals reflect the prevailing quality, character and features.

The proposed building is approximately 50 sq.metres larger than the existing building and will be located against the northern boundary of the site. Whilst the new roof will add some height in comparison to the existing flat roofed building this will be hipped and set back from the back of the footpath by around 4.5m with the side elevation fronting the road. The buildings to the north and the residential properties to the east are set back from the footpath between 3m and 6m and are a mixture of two storey and single storey buildings. In some instances, the properties opposite the site have been extended single storey with gables right up to the back of the footpath.

Due to the orientation of the building, side on to the road, the views from the highway onto the open space of the recreation ground have been maximised. In addition, it allows considerable parking provision to be included within the site boundary and the side elevation of the building is more sympathetic to the scale of the neighbouring residential properties.

The materials and style of the proposed building are in keeping with the residential nature of the surrounding area. The brickwork will be pale in colour to ensure it is sympathetic with the residential properties nearby and the roofing material is of a grey tone which is also similar to the surrounding houses. The fascias, soffits and windows are to be moss green aluminium to link in with the open space with a natural wood tone cladding to ensure a natural theme.

A 1.8m high mesh gate and security fencing is proposed along the rear elevation of the building. Whilst this will be visible within the street scene when travelling southwards along Horsewell Lane it will be viewed against the backdrop of the new building, painted green and will match the fencing in the immediate area. In addition, 1.2m high bow top fencing is also proposed along the side adjacent to the existing pitch (painted moss green) and a retaining wall between the car park and the front of the new building.

In view of the above, it is not considered that the design and siting of the building will significantly impact on the character and appearance of the street scene.

The impact of the proposal on neighbouring residential properties

The building replaces an existing facility on the site and is sited on the opposite side of the road from the nearest residential properties which are in excess of 22m away. Given the existing facility, it is not considered that the proposal will significantly impact on the amenities of neighbouring properties over and above the existing situation.

Highway/Access Issues

The current access and egress routes will be maintained. It is proposed to use a one-way circulation route around the site, incorporating one entrance point and one exit. The car park has been designed to accommodate spaces for cars, disabled parking, enlarged bays, mini-bus parking and an area for motorcycles. Bicycle parking has also been included to the front of the site. There is a level access and a ramped route on to the recreation ground from two points in the car park.

The Highway Authority have been consulted, however, no comments have been received at the time of writing this report.

Other Matters

With regards to the comments raised in respect of the demolition of the youth club building, new paving slabs and gate to the tennis club, these are outside the scope of this application. In respect of the recycling bins, these are not shown as being retained on the proposed plans.

Conclusion

In summary, the proposed development is not considered to harm the character and appearance of the street scene or that of the surroundings, the amenity of neighbouring residential properties or the safe and efficient use of the highway and is, therefore, recommended for approval.

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	No Significant implications

Recommendation

For the reasons set out in the above report then **PERMIT** subject to the following conditions:

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91 (1) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 The development hereby permitted shall be constructed using the materials specified on approved drawing no. 5164891/005, unless alternative materials are agreed in writing by the Local Planning Authority.
Reason: To safeguard the character and appearance of the building and its surroundings and in accordance with the aims and objectives of the National Planning Policy Framework, Core Strategy Policies 14 and 15 and Landscape Proposal 1 of the Oadby and Wigston Local Plan.

3 Prior to the first use of the building hereby granted permission the parking areas shown on the approved plan(s) shall be provided in a bound material (with the parking bays marked out on the ground) and thereafter shall be made available at all times for their designated purposes.

Reason: In the interests of highway safety and in accordance with the aims and objectives of the National Planning Policy Framework and Core Strategy Policy 4.

4 Prior to the first use of the building hereby granted permission the cycle parking provision shown on the approved plan(s) shall be provided and thereafter shall be maintained as such for the life of the development.

Reason: To encourage sustainable alternatives to the motor car and in accordance with the aims and objectives of the National Planning Policy Framework and Core Strategy Policy 4.

5 Prior to the commencement of development a scheme for the disposal of foul sewage and surface water drainage for the site (based on sustainable drainage principles) shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to the first occupation of the first dwelling and, unless otherwise first agreed in writing by the Local Planning Authority, shall be maintained as such for the life of the development.

Reason: To ensure adequate drainage facilities are provided to serve the development and to prevent pollution of the water environment as recommended by Severn Trent Water Limited and in accordance with the aims and objectives of the National Planning Policy Framework.

6 Unless otherwise first agreed in writing by the Local Planning Authority all materials resulting from the demolition works shall be removed from the site within two months of the demolition and the site shall be left in a clean and tidy condition.

Reason: To safeguard the character and appearance of the area and in accordance with the aims and objectives of the National Planning Policy Framework, Core Strategy Policies 14 and 15 and Landscape Proposal 1 of the Oadby and Wigston Local Plan.

7 The building hereby permitted shall not be open to the public outside the following times:

Monday to Saturdays	08:00 and 23:30
Sundays and Bank Holidays	08:00 and 22:00

Reason: In the interests of the amenities of local residents and the locality in general in compliance with Landscape Proposal 1 of the Oadby and Wigston Local Plan.

8 Unless otherwise first agreed in writing by the Local Planning Authority during the period of construction works vehicle parking facilities shall be provided within the site and all vehicles associated with the development shall be parked within the site.

Reason: To ensure that adequate off-street parking provision is made within the site and to reduce the possibilities on-street parking problems in the area during construction works and in accordance with the aims and objectives of the National Planning Policy Framework and Core Strategy Policy 4.

9 Unless otherwise first agreed in writing by the Local Planning Authority for the period of the construction of the development wheel cleansing facilities shall be provided within the site and all vehicles shall have their tyres and wheels cleaned (as may be necessary) before leaving onto the public highway.

Reason: To reduce the possibility of deleterious material (mud/stones etc) being deposited on the public highway during construction works in the interests of highway safety and in accordance with the aims and objectives of the National Planning Policy Framework and Core Strategy Policy 4.

- 10 Prior to the installation of any external lighting, full details of the proposed lighting shall be submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in accordance with the approved details and maintained accordingly.

Reason: In the interests of the amenities of local residents and the locality in general and in compliance with the National Planning Policy Framework and Landscape Proposal 1 of the Oadby and Wigston Local Plan.

- 11 Any external lighting shall be switched off no later than 30 minutes after the approved closing times and shall remain switched off until opening time the following day.
Reason: In the interests of the amenities of local residents and the locality in general and in compliance with the National Planning Policy Framework and Landscape Proposal 1 of the Oadby and Wigston Local Plan.

- 12 Unless otherwise first approved in writing (by means of a Non-material Amendment/Minor Material Amendment or a new Planning Permission) by the Local Planning Authority the development hereby permitted shall be carried out in accordance with the approved plans and particulars listed in the schedule below:

Application Form submitted and received by the Local Planning Authority on 10 July 2018
Location Plan, drawing no. 5164891/001 submitted and received by the Local Planning Authority on 10 July 2018
Site Plan, drawing no. 5164891/002 submitted and received by the Local Planning Authority on 13 July 2018
Block Plan, drawing no. 5164891/003 submitted and received by the Local Planning Authority on 13 July 2018
Proposed Roof Plan, drawing no. 5164891/004 submitted and received by the Local Planning Authority on 17 July 2018
Proposed Floor Plan, drawing no. 5164891/004 submitted and received by the Local Planning Authority on 13 July 2018
Proposed Elevations, drawing no. 5164891/005 submitted and received by the Local Planning Authority on 17 July 2018
Proposed Site Sections, drawing no. 5164891/006 submitted and received by the Local Planning Authority on 10 July 2018
Demolition Plan, drawing no. 5164891/007 submitted and received by the Local Planning Authority on 10 July 2018

Reason: For the avoidance of doubt as to what is permitted by this permission and in the interests of proper planning.

Note(s) to Applicant :

- 1 You are advised that this proposal may require separate consent under the Building Regulations and that no works should be undertaken until all necessary consents have been obtained. Advice on the requirements of the Building Regulations can be obtained from the Building Control Section.

- 2 If the proposal involves the carrying out of building work along or close to the boundary, you are advised that under the Party Wall Etc. Act 1996 you have a duty to give notice to the adjoining owner of your intentions before commencing this work.
- 3 For the avoidance of doubt this permission does not authorise any development outside the application site including any foundation, footings, fascias, eaves, soffits, verges or guttering.
- 4 You are advised that any amendments to the approved plans will require either a Non-Material amendment application, a Minor Material Amendment application or a new planning application. If this is the case then you should allow at least 8 weeks before the intended start date to gain approval for such amendments. Further advice can be obtained by contacting the Planning Section of the Council on any amendments (internal or external).
- 5 This permission requires you to submit further details to the Local Planning Authority on the proposal prior to the commencement of works on site. There is a fee payable to the Local Planning Authority when a request is made for the discharge of one or more conditions on the same permission or for confirmation of compliance with a condition or conditions. At the time of writing, the fee is payable per written request to discharge conditions not per condition and therefore any number of conditions may be included on a single request. The fee for such a request associated with this permission (at the time of this decision notice) is £116. The fee must be paid when the request is made. The Local Planning Authority has a statutory period of 8 weeks for the determination of such requests.
- 6 The Applicant is advised that each car parking space shall measure a minimum of 2.4 metres in width by 4.8 metres in length with any access isles being a minimum of 6 metres in width.
- 7 The applicant is advised that no demolition works or associated works or operations should take place on the site except between the hours of 8.00am and 6.00pm Monday to Friday, 9.00am to 2.00pm on Saturday and at no time on Sundays or Bank Holidays.
- 8 The Application as submitted was considered to be acceptable and therefore discussion with the applicant to seek an acceptable solution was not considered necessary in making this decision. The Local Planning Authority has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the National Planning Policy Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Appeals to the Secretary of State

If you are aggrieved by the decision of your local planning authority for the proposed development 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 6 months of the date of this 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-planning-inspectorate

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

The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

Purchase Notices

If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the Council (District Council, London Borough Council or Common Council of the City of London) in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

BACKGROUND PAPERS

- a. 18/00279/FUL
- b. 18/00284/FUL
- c. 18/00317/FUL

From: David Gill – Head of Law and Governance / Monitoring Officer

To: All Members of Development Control Committee

BRIEFING NOTE – Tree Preservation Orders and Compensation

At the meeting of Policy Development and Finance Committee on 17 July a request was made for an update on the current position in respect of the payment of compensation under the provision of the Town and Country Planning Act 1990 (and associated regulations) where an application for works to a protected tree is refused and damage is subsequently caused.

Legislation

The Town and Country Planning (Tree Preservation) (England) Regulations 2012 introduced a single set of procedures for all trees covered by tree preservation orders. Consequently:

- Orders made before 6 April 2012 continue to protect the trees or woodlands they cover
- the legal provisions listed in Orders made before 6 April 2012 have been automatically cancelled and replaced by the provisions in the new regulations.
- Only the information necessary to identify these Orders and identify the trees or woodlands they protect is retained

NB: Many of the pre-2012 orders contained a restriction on the ability to claim damages or compensation which is now now longer of any effect.

Taking decisions on applications for consent under a Tree Preservation Order.

- In considering an application, the local planning authority should assess the impact of the proposal on the amenity of the area and whether the proposal is justified, having regard to the reasons and additional information put forward in support of it. The authority must be clear about what work it will allow and any associated conditions. Appeals against an authority's decision to refuse consent can be made to the Secretary of State.
- In certain circumstances, compensation may be payable by the local planning authority for loss or damage which results from the authority refusing consent or granting consent with conditions. However, there are strict criteria and limitations on what compensation may be payable.

When considering an application the authority is advised to:

- assess the amenity value of the tree or woodland and the likely impact of the proposal on the amenity of the area;
- consider, in the light of this assessment, whether or not the proposal is justified, having regard to the reasons and additional information put forward in support of it;
- consider whether any loss or damage is likely to arise if consent is refused or granted subject to conditions;
- consider whether any requirements apply in regard to protected species;
- consider other material considerations, including development plan policies where relevant; and
- ensure that appropriate expertise informs its decision.

However, if the authority believes that some loss or damage is foreseeable, it should not grant consent automatically. It should take this factor into account alongside other key considerations, such as the amenity value of the tree and the justification for the proposed works, before reaching its final decision.

What can the local planning authority decide?

When determining applications for consent under an Order, the authority may:

- grant consent unconditionally;
- grant consent subject to such conditions as it thinks fit;
- refuse consent.

The authority must decide the application before it, so it should not issue a decision which substantively alters the work applied for. The authority could, however, grant consent for less work than that applied for.

What about granting consent subject to conditions?

A condition may:

- relate to the planting of replacement trees;
- require further approvals to be obtained from the person giving the consent;
- regulate the standard of the authorised work;
- allow repeated operations to be carried out (works may be carried out only once unless a condition specifies otherwise); and/or
- impose a time limit on the duration of consent other than the default 2 year period.

A condition should:

- relate to the authorised work;
- be fair and reasonable in the circumstances of each case;
- be imposed only where there is a definite need for it; and
- be worded precisely, so the applicant is left in no doubt about its interpretation and the authority is satisfied it can be enforced.

The authority is responsible for enforcing all conditions in a consent, so its decision notice should clearly state the reasons for its conditions. This is particularly important where repeated operations have been applied for. In such cases the authority should make the scope, timing and limit of the work clear.

What information should be provided by an authority if it refuses consent or imposes conditions?

When an authority decides to refuse consent or grant consent subject to conditions its decision notice should clearly state what the decision is and the reasons for that decision. These should specifically address each of the applicant's reasons for making the application. In addition, the authority should:

- give its reasons for each condition imposed;
- explain the applicant's right of appeal to the Secretary of State against the decision and give the contact details of the Planning Inspectorate; and

- explain the applicant's right to compensation for loss or damage as a result of the authority's decision, and how a claim should be made.

In what circumstances may a local planning authority be liable to pay compensation?

An authority is only liable to pay compensation in certain circumstances and there are strict criteria and limitations. Subject to provisions relating to forestry operations in protected woodland, an authority may be liable to pay compensation for loss or damage caused or incurred in consequence of it:

- refusing any consent under an Order;
- granting a consent subject to conditions; or
- refusing any consent, agreement or approval required under a condition

What are the limits for making claims for compensation?

No claim can be made for loss or damage incurred before an application for consent to undertake work on a protected tree was made.

Legislation sets out circumstances in which a claim cannot be made. Subject to provisions relating to forestry operations in protected woodland, a claim for compensation must be for not less than £500 and made to the authority either:

- within 12 months of the date of the authority's decision; or
- within 12 months of the date of the Secretary of State's decision (if an appeal has been made).

What limits the local authority's liability to pay compensation?

Legislation limits the authority's liability by setting out circumstances in which a claim cannot be made and circumstances in which compensation is not payable.

Subject to specific provisions relating to forestry operations in protected woodland, any claimant who can establish that they have suffered loss or damage as a result of an authority either refusing consent or imposing conditions in respect of protected trees is entitled to claim compensation. However the authority's liability is limited.

In such cases, compensation is not payable for any:

(1) loss or damage which was:

- reasonably foreseeable by that person; and
- attributable to that person's failure to take reasonable steps to avert the loss or damage or mitigate its extent;

(2) loss or damage which, having regard to the application and the documents and particulars accompanying it, was not reasonably foreseeable when consent was refused or was granted subject to conditions;

- loss of development value or other diminution in the value of land; and/or
- costs incurred in making an appeal to the Secretary of State against the refusal of any consent or the grant of consent subject to conditions.

Discussion

In so far as (1) above is concerned particular concern was generated by the case of *Burge & Anor v South Gloucestershire Council* a case in the Upper Tribunal (Lands Chamber) reported in August 2016.

The case concerned South Gloucestershire's refusal to allow the felling of an oak tree covered by a tree preservation order, despite its roots having been found to have damaged the foundations of a resident's conservatory.

South Gloucestershire argued that the conservatory had been so badly built that it would have failed anyway.

It also contended that the claimants' loss was not reasonably foreseeable when felling consent was withheld in 2010.

The tribunal said it was already known by then that the oak was causing significant damage to the conservatory's foundations and "we do not consider that the council comes anywhere near satisfying us that further loss or damage to the claimants was not reasonably foreseeable at that date".

South Gloucestershire argued that, were it to lose: "Anyone would be entitled to erect an inadequate building near a protected tree contrary to all industry guidance and when damage is caused by that tree and the local authority refuses to grant consent to fell the tree they are liable to pay damages in any and all events".

The reverse argument was put by the claimant (and accepted by the Tribunal) that where a claimant had instructed a reasonably competent builder to build a construction in accordance with the industry guidance of the time that was sufficient to discharge the duty to take reasonable steps to avert the loss or damage or mitigate its extent and therefore compensation should follow.

The case was appealed to the High Court in September 2017 where the court held that the Upper Tribunal had misdirected itself in law, although it did not say that the decision was in fact wrong and remitted the case back to the Tribunal to be re-determined.

As regards point (2) where it is reasonably foreseeable to an authority from the documentation and particulars submitted with an application that damage is likely to occur then an authority will not be protected from a compensation claim. Government guidance is that appropriate expertise (in the form of expert arboricultural and ecological advice, and/or technical evidence from a relevant engineer, building/drainage surveyor or other appropriate expert) should inform the final decision.