

**MINUTES OF A MEETING OF THE DEVELOPMENT CONTROL COMMITTEE HELD
AT THE COUNCIL OFFICES, WIGSTON ON THURSDAY 25 JUNE 2015
COMMENCING AT 07:00 PM**

IN ATTENDANCE:

Chair - L A Bentley
Vice Chair- Mrs L M Broadley

Councillors: G S Atwal; G A Boulter; D M Carter; B Dave; D A Gamble; J Kaufman; Dr T Khong; Mrs H E Loydall; and R E R Morris

Officers in attendance: Mrs A Court; C Forrett; and S Ball

Others in attendance: Mrs S B Morris and L Wiggins

Min Ref.	Narrative	Officer Resp.
14.	<p>APOLOGIES FOR ABSENCE</p> <p>Apologies received from Councillors E Barr, F S Broadley, Mrs S Z Haq and R F Eaton.</p>	
15.	<p>DECLARATIONS OF SUBSTITUTIONS FOR COMMITTEE MEMBERS</p> <p>None.</p>	
16.	<p>DECLARATION OF INTERESTS</p> <p>Councillor Mrs H E Loydall declared that application 4/00538/FUL and the references made in the report to the Police, that her son is employed by the Police Constabulary in the Loughborough area.</p>	
17.	<p>PETITIONS AND DEPUTATIONS</p> <p>None.</p>	
18.	<p>MINUTES OF PREVIOUS MEETING HELD ON 28 MAY 2015</p> <p>RESOLVED: That the minutes of the previous Committee meeting held on Thursday 28 May 2015 be taken as read, confirmed and signed.</p>	
19.	<p>TREE PRESERVATION ORDER TPO/0307 - MARSTOWN AVENUE</p> <p>The Committee gave consideration to Agenda item 6 at pages 10-12. These should be read together with these minutes as a composite document.</p> <p>Mrs S B Morris spoke on behalf of residents as their request to speak in person had been denied. It was stated that residents had chosen to move to south-side properties on Marstown Avenue due to the rear-view of the land in respect of the trees and wildlife within. The trees</p>	

were reported to provide an effective sound-barrier to the noise generated from the railway line and screening from the properties adjacent. The Forestry Commission was cited in that the removal of trees may cause subsidence from the movement of trains. The high-water table upon which the properties were sited was said to be at risk due to the stability provided by the trees in the clay grounding. The Forestry Commission attended the site to inspect on three occasions and concluded the site was worthy of protection, recommending tree management as opposed to felling. They warned that the removal of trees may affect the railway embankment and the structural integrity of the properties. She claimed that the residents' insurers had advised a claim would be instigated against the Council to remedy any damage caused insofar as not retaining the trees and confirming the TPO, as a recent local precedent dictated. The resident's thanked Members for their consideration. Mrs Morris summarised that the site provided a public amenity to residents either side on both Marstown Avenue and Kirkdale Road and invited Members to confirm the TPO for the reasons aforementioned.

A Member enquired as to why the residents were not permitted to speak in person at the meeting. The Chair advised that such a granting of permission was contrary to the Standing Orders in respect of consideration of TPO's.

A Member sought a point of clarification from the speaker as to the precedent cited in her report. It was confirmed that the precedent referred to was an historic claim against the Council for subsidence in the said area of land.

The Chair advised Members that the issue before them was whether to confirm or otherwise the TPO and not the process or reasons for delays for which the report was put before Members for their due consideration.

The Planning Control Manager summarised the contents of the report for agenda item 6 (pages 10-12). He directed Members attention to a site visit that took place some six weeks ago. The site was described as a now unkempt, former builders' yard. The TPO was originally made during the Christmas period at which time work was being undertaken. He referred Members to the report, citing that representations had been received for and against the confirming of the TPO (at page 11). The Council's arboriculturist had attended the site and had not recommended the making of a TPO due to the tree's poor quality or low public amenity value (at page 12). The oak tree positioned to the east of the site had since been removed due to its adverse structural impact on the courtyard of garages positioned nearby: this tree alone was considered sufficient to warrant a TPO prior to its removal.

The Planning Control Manager advised Members that the points raised by the speaker (viz. water-table level, acoustic-barrier and screening) were not before Members' consideration and/or sufficient justification to override the recommendation of the report not to confirm the TPO. He confirmed that the line of sight from the railway bridge to the site was approximately 70-80 metres and obscured by a secondary line of trees

positioned by Network Rail along the embankment, rendering the trees barely visible. The poplar trees that were visible close to the boundary with Network Rail had been pollarded and the recommendation was to re-pollard if further works were to be undertaken. The area of land in question was reported to provide little public amenity value to justify the continued protection of the trees thereon.

A Member agreed that the trees onsite required an extensive amount of work. He raised a concern regarding the transpiring of work required to a felling of a total of 12 trees on the site as of the 29 December 2014 resulting in the provisional making of the TPO. The felling has been carried out by means of services rendered by a tree surgeon (applied loosely) employed by the land's proprietor to undertake work. It was stated that the Planning Control and Enforcement Officer attended the site on behalf of the Council on four occasions since the initial making of the Order in response to reports of chainsaws being taken to the land. The Forestry Commission was cited to have issued a 'no felling' direction, in place until September 2015, during which time the oak tree was nevertheless felled. The Member made reference to an unverified case imminently before the courts taken by the Forestry Commission against a land owner in similar circumstances. For the aforesaid reasons, the Member opined that there was an imminent danger and therefore a ground for the TPO to be confirmed.

The Member further stated that Natural Britain had attended the site and confirmed the presence of bats and slow-worms, the later being protected under the Wildlife & Countryside Act 1981 as a 'priority species'. The removal of trees was therefore reported to potentially stifle the biodiversity of the land and engager wildlife. In respect of public amenity value, it was stated that the site was visible irrespective of distance and cited a notable decision of other authority which, in confirming a TPO, found public amenity value in the case of a single resident's line of sight from a rear-garden area. It was further opined that the sound-barrier provided by the trees in question did harbour some of the noise generated and that its utility in this regard was yet to be proved by the Planning Control Manager. He noted that if the TPO was confirmed, the likelihood of the proprietor of the land appealing to the High Court was minimal due to the financial implications accrued to him. The Member submitted there was sufficient justification to confirm the TPO for the aforementioned reasons and moved the proposal for the same.

A Member stated that the site was an important wildlife corridor, one of only a few in the Borough leading-off the railway embankment, and a forging area and habitat for known bats and slow-worms. He stated that if the TPO were to be confirmed, it would not prevent the necessary work to be undertaken in the future (subject to an application) and would preserve the sound-barrier provided. However, to not confirm the TPO would be the incorrect decision, adding that a number of trees onsite were particularly attractive specimens and different to those found elsewhere in the Borough. The Member approached the question on the balance of probability insofar as the likelihood of the proprietor felling the remaining trees onsite if the TPO were not to be confirmed, citing past experience as an indicator of near certainty of the same. The

fact that the trees in question could be seen from 11 south-side properties on Marstown Avenue should be given sufficient weight in favour of the argument to confirm the TPO. The secondary line of trees alongside the railway embankment were said to be subject to the discretion of Network Rail who, in the Winter past, had removed similar trees from the site at the old station on Station Road. He summarised the reasons aforementioned and stated that on the balance of probability, it would be wise to confirm the TPO and to invite the applicant back to undertake the necessary work. The Member seconded the proposal for the TPO to be confirmed.

The Chair stated that he appreciated the views of Members and so to provide greater balance, noted that the site was mostly scrubland littered with waste (e.g. bricks, pallets etc.) which required clearing due to a risk of contamination impacting on the biodiversity. He stated that if the applicant did exercise his right to appeal, a cost implication would too be borne by the Council and so warned Members on the prudent-use of public funds in such matters.

A Member sought clarification as to the definition of a tree and the numbers of trees seeking preservation in the context of an Order made covering all trees located in the area defined on the plan provided (at page 10). He stated that much of the biodiversity onsite may be supported by scrub and other forms of non-tree vegetation present.

The Planning Control Manager advised Members that a detailed survey of the site had not been undertaken so the exact number of trees under the Order was not known. He stated that, according to the regulations, the definition of a tree and the size of the area covered by an Order was determined by a prescribed height and girth of the tree(s) for the purposes of a TPO.

The Member sought comment from the Officers in respect of the Council's possible legal responsibility in view of both opposing parties' contentions that a liability to the Council may potentially arise either way (i.e. clay-soil issues due water retraction, unmanageable damp areas due to light blockage, and potential hazards to the railway at page 11), described as a "no win" situation.

The Planning Control Manager advised Members that no liability would arise against the Council. The proprietor of the land would assume responsibility in the event of any subsistence and/or ground-shrinkage should the TPO not be confirmed and trees subsequently removed. An issue of liability in respect of the felled oak tree was now said to be non-existent insofar as, in preventing the proprietor from felling the tree, the Council would have been liable for its adverse structural impact on the courtyard of garages positioned nearby (as confirmed by a Court Order). This is what formed part of the representations received from concerned residents on Marstown Avenue.

The Monitoring Officer confirmed the Planning Control Manager's advice.

Councillor G S Atwal vacated the Council Chamber at 07:32 PM.

A Member sought a more definitive statement from the Officers as to the exact extent of the Council's legal responsibility insofar as if the TPO was to be confirmed, whether the Council would be liable or not if a tree subsequently fell and injured an individual and/or caused an obstruction on the railway line.

The Planning Control Manager advised Members that the point entertained two aspects: (i) the making of the Order; and (ii) the dealing with applications to undertake work to a TPO tree. In respect of the former, it was advised that ordinarily the Council was not exposed to such a risk, save for if a TPO was confirmed in the knowledge that the trees were structurally poor or weak. In respect of the latter, it was advised that the reverse was true and the applicant could seek costs from the Council. It was stated that this contingency was not the case nor before Members for their consideration.

A Member stated he agreed with the representation made by the Council's volunteer Tree Warden in that confirming the TPO would be consistent with the 'Greening the Borough' policy (at page 12) in aspiring to promote the healthy development of trees *vis-a-vis* the retention of all trees. It was said that by not confirming the TPO do Members seek to prevent the proprietor from maintaining the trees in question to ensure their long-term health. The Member reiterated the notion of a decision based on the balance of probabilities and stated his inclination in favour of confirming the TPO.

A Member re-echoed the Council's arboriculturist comments regarding the tree's poor quality and the removal of dead wood (at page 12), the Council was said to be at risk if it were to confirm the TPO. The Member stated that had the oak tree remained, she would have had no hesitation in supporting the confirmation of the TPO. She directed Members to focus on what trees remained, describing the remainder as insignificant in terms of their ill-health and limited lifespan.

The Chair advised that no such opportunity could be afforded as the confirmation or otherwise of the TPO was a matter that required a final determination at this meeting.

In responding to Members' earlier questions. The Planning Control Manager reported that on the occasions where the Planning and Enforcement Officer had attended the site, the works being undertaken at the time were the cutting of lodges/branches already felled and the felling of the oak tree itself. In respect of the Forestry Commission, the legislation in question was not over-riding but a separate issue which ought not to feature in Members' considerations. In respect of protected species, the confirmation of the Order or otherwise would not engender any rights or implications under the Wildlife & Countryside Act 1981. He directed Members' to consider the quality of the public amenity value provided by the trees as a determining factor, with reference made to the arboriculturist's and Members' earlier comments as to the poor quality of particular trees cited. The trees were said to have some noise-deadening properties however, due to the numerous breaks in the tree line, this was neither absolute nor material to the decision-

	<p>making process. According to planning guidance, it was not recommended that a TPO be confirmed as a means to manage any work undertaken acknowledged by all as necessary.</p> <p>The Chair moved for the recommendation for TPO not to be confirmed, stating that to otherwise confirm in this instance was not the correct decision so to ensure the expediency of tree management onsite and to afford the landowner the opportunity to honour the assurances given to the same.</p> <p>A Member seconded the proposal for the recommendation to be approved.</p> <p>DEFEATED THAT:</p> <p>The amendment to the recommendation that the Tree Preservation Order (TPO) made on the 30 December 2014 be confirmed by four votes in favour, and six votes against.</p> <p>RESOLVED THAT:</p> <p>The recommendation that the Tree Preservation Order (TPO) made on the 30 December 2014 is not confirmed by six votes in favour, and three votes against.</p>	
19.	<p>TREE PRESERVATION ORDER TPO/0308 - 3 GLEBE CLOSE</p> <p>The Committee gave consideration to Agenda item 7 at pages 13-14. These should be read together with these minutes as a composite document.</p> <p>The Planning Control Manager summarised the contents of the report for agenda item 7 (pages 13-14). He reported that two s. 211 Tree Notifications were received for the felling of multiple trees onsite to which the arboriculturist's advice was sought. A provisional Tree Protection Order (TPO) was made for reasons of public amenity value. The arboriculturist was not able to gain entry to the site since to complete a more detailed inspection of the trees. The recommendation was to confirm the TPO as provisionally made given the timescales involved. There had been no change in circumstances.</p> <p>A Member enquired as to why access to the site in question was not possible and/or granted.</p> <p>The Planning Control Manager advised Members that dealings had been ongoing with the proprietor's agent and that, despite several attempts to request access to the site, no permission was forthcoming.</p> <p>RESOLVED THAT:</p> <p>The recommendation that the Tree Preservation Order (TPO) made on the 28 January 2015 be confirmed.</p>	
20.	<p>REPORT OF THE PLANNING CONTROL MANAGER</p>	

The Committee gave consideration to Agenda item 6 at pages 15-32. These should be read together with these minutes as a composite document.

1. 14/00538/FUL - Wigston House, 183 Kirkdale Road, Wigston, Leicestershire, LE18 4SU

The applicant's agent, Mr L Wiggins, spoke on behalf of Wesley House Partnership. He spoke of the applicant's delight in the application securing recommendation for approval, stating the proposal sought to provide a well-designed housing scheme that was both attractive and in-keeping with the conservation area. It proposed redevelopment on a brownfield site for housing in a predominately residential area recognised, in principle, to fulfil the regeneration master plan for the area in accordance with policy three of the adopted core-strategy. It was acknowledged that the proposal if brought-forward formed a significant part of the Council's wider regeneration scheme objective which the applicant fully supported. The proposal was said to not preclude the development of the bus depot nor the land off Bennett Way, with provisional access to the latter being facilitated. The noise generated by the depot was noted as an issue for adjoining plots and that concerns regarding the appearance of a high-acoustic fence should be allayed due to it being out-of-sight from the road and the potential for the fence's height to be reduced once the noise-source was removed. The scheme was said to adopt the design-principle of providing strong frontages on the back-edge of the footpath, with staggered groups of dwellings further into the site away from the traditional terraced street-pattern. All of the dwellings were said to be provided with two, off-street vehicle-parking spaces, with the exception of the smaller apartments with a 125% division to cater for residents and businesses. All houses are to include private rear gardens of an appropriate size, with the occupiers of the apartments sharing a communal garden area.

He noted the concerns raised during the determination of the application and stated that they had now been resolved as confirmed in the report. The four dwellings proposed on plots 10 to 13 to the north of Kirkdale Avenue was said to have a minimal impact to the level of light enjoyed by those occupiers. The closest dwellings to the east were to be positioned to the gable-end of the rear-elevation/s to ensure no over-looking and the minimum amount of disturbance from noise and lighting. It was reported that there would be no discernible impact from the noise generated from passing traffic once onsite. The amount of traffic and its impact on the highway network had been assessed by the applicant's partner and praised by the Highways Authority with no objections raised. The applicant was said to be aware of the presence of Japanese knotweed on the western-side of the site and gave assurances that the necessary steps would be taken to eradicate it. It was reported that the applicant had a proven track-record in delivering affordable housing locally and that it was their desire for the 56 proposed dwellings to accommodate local families in housing need as soon as practicably possible. It was anticipated that work would commence onsite immediately once the pre-commencement conditions

were discharged and the applicant was keen to avoid any delays due to the limited window of opportunity in terms of the scheme's funding.

The Planning Control Manager summarised the contents of the report for agenda item 8 (pages 16 - 32). The proposal was a scheme of 56 dwellings incorporating a number of design features from the conservation area to remain in-keeping with the same. A number of visual elevations were presented to Members to demonstrate the design's consistency with Kirkdale Road. It was said that a number of amendments had been made in consultation with Conservation Officers, most notably in respect of the dwellings' canopies. The amended siting of properties on a hip to the rear of Kirkdale Road was a helpful amendment in terms of planning to alleviate the impact on visual neighbouring residential properties. The design did not reflect the parking arrangements of a traditional housing estate resulting in a number of parking-court areas, designed and sited to prevent overlooking. It was noted that a balance was recognised between the need for adequate parking in modern-day terrace properties and retaining the area's character. In respect of the acoustic-fencing, the proposal was to install the fence along the identified boundary to ensure the acoustic levels were acceptable to prospective residents' living standards: although noted as not an ideal solution, the fencing would not be seen in the public domain. The concept was said to evolve in terms of later planning and noise mitigation.

The Planning Control Manager informally updated Members as to the comments received back from consultations since the drafting of the report. County Highways was said to have reiterated the overall theme of the conditions outlined. A s 106 agreement contribution was also to be sought in respect of the real-time provision of travel/tracking-information in relation to bus-stops which were forming part of the negotiations to ensure compliance with the civil regulations. It was noted that discussions had not been forthcoming with the Police regarding the report's reference to their respective contribution. Members were invited to delegate to Officers the authority to progress and negotiate the above under the appropriate delegated powers. The Police were reported to have objected to the application as it did not provide for their required mitigation on policing impacts to which the Planning Control Manager did not agree for reasons outlined in the report. The figures in the report regarding the CCTV have been deemed unsuitable by the Police for reasons of insufficient funding. However, according to the Community Infrastructure Levy Regulations, it was noted that the developer should not contribute more than was necessary in planning terms: the Police's suggestion was said to go above and beyond the need arising from the development and a recommendation was put to Members to agree to the original contribution in the report.

The Chair advised Members to consider the matters before them, to the exclusion of an earlier reference made to prospective access to Bennett Way.

A Member stated that it was unacceptable for Highways to submit a late letter and expected future compliance within the prescribed

timescales. He approved of the application, describing it as well-designed and affordable housing scheme on a brownfield site and commended the applicant's considerable efforts to remain in-keeping with the conservation area. The Member moved the proposal in favour of the recommendation.

The Planning Control Manager advised Members that there had been an ongoing dialogue with Highways and a number of responses had been received over a period of time during negotiations before a formal reply.

A Member was in favour of regenerating a brownfield site. He enquired as to whether the applicant experienced any difficulty in sourcing a suitable green as the trees onsite appeared more mature than those intended to be planted. He requested a landscaping plan be implemented involving Members and Tree Wardens. It was asked as to whether some sound-deadening provision could be additionally installed to protect prospective residents from noise generated from the Leicester-to-Birmingham railway line. The use of a suitable brick colour was also raised so to be in-keeping with the street-scene on Kirkdale Road. He enquired as to whether Leicestershire County Council would be taking ownership of the highways within the dwelling-complex.

The Chair confirmed that it was acceptable for Members to be involved in such a landscaping plan given their appropriate training. It was noted that the noise emanating from the railway line would have been minimised had the decision of central government gone ahead to electrify the trains/lines.

The Planning Control Manager made reference to the architect's plans, citing the three green circles as indicative of the landscaping scheme forming part of the recommendation. The railway line had been acknowledged in the report as a noise-source of concern and a package of window-glazing was to be installed to ensure acceptable living standards for prospective residents. The railway line was noted to be the Southern freight-line with only a few trains passing during the day-time only. He advised Members that the development required red-brick materials in terms of maintain a consistency with the character of Kirkdale Road, controlled by planning conditions. The main access highways were to be of an adoptable standard and adopted as such, with the exclusion of three identified roads best maintained through site management.

A Member agreed with the landscape planning. He enquired as to whether the adopted highways would have street-lighting and if the dwellings' design incorporated slate/slate-like roofing and chimneys to complement the surrounding street-scene. He opined that the proposal was of a poor and monotonous design, noting that every street in the area had its own design peculiarity. A major concern was raised regarding access arrangements from Kirkdale Road and Station Street, stating that rear-access from Bennett Way was more commonsensical: he expressed his unwillingness to endorse any development sited on the proposed juncture. It was said that the area ought to be developed

but in sympatric way and therefore, for the reasons also aforementioned, the Member felt unable to support the application.

The Planning Control Manager advised Members that in respect of chimneys, the proposal was a modern development in a conservation area that is predominately unseen. He stated that he could not disagree in principle with the Member's suggestion and was willing to negotiate with the applicant to explore the possibility of the front block of dwellings incorporating chimneys: there would be some reluctance to go beyond that as the statutory test had been met in terms of the area's character *vis-a-vis* improvement proposed.

The Chair stated that access via Bennett Way was not before Members.

The Planning Control Manager advised that there had been some historical discussions concerning traffic-flow and access. He confirmed that Kirkdale Road and Station Street was an existing highway access-point and a non-discretionary view of the same had been taken by Highways. It was advised that there was no theoretical difference in the traffic-flow at either access point and presented the same highway benefit. It was re-iterated that Bennett Way did not form part of the application which must be considered on its sole merits: however, it was added to reassure Members that access via Bennett Way was predominantly under the control of the Council and discussions had been held with the developers to explore this subject-matter.

The Chair stated the proposal would be consistent with the Member's earlier that every street in the area had its own design peculiarity insofar as the proposed development itself was of also of a comparatively distinct design. The Member disagreed with this statement for the reasons aforementioned.

The Member raised a concern as to the adequacy of vehicle-parking spaces provided for prospective apartment residents (i.e. 1.25 spaces per apartment) and sought clarification as how any overflow would be accommodated.

The Chair enquired as to whether this was a town-centre development.

The Planning Control Manager advised that, in terms of parking availability, the development was not considered to be a town-centre site but was in walking distance of the same so was a material consideration. The apartments were noted to be smaller than the one-bedroom units and, as such, of a commensurate vehicle-parking generation. The availability of parking spaces was considered appropriate given the site's location and access to nearby amenities and transport links.

The Member stated there was insufficient parking availability Kirkdale Road and Station Street which would worsen due to the intended highway access.

The Planning Control Manager advised Members that the Highway Agency had recommended that the highways in the site were to be

subject to a Traffic Regulation Order (i.e. double yellow lines) to ensure fluid access, adding it would have neither a positive nor negative effect of existing residential properties. It was said that the choice of roofing-materials formed part of the conditions and, whilst noting the Member's suggestion above, that an eclectic mix of materials had been used on existing terraced properties. Slate/slate-like roofing was considered to unnecessary. The choice of roofing-materials was said to be crucial, with the possible use of mock clay tiles suggested.

The Member suggested that brick-detailing be introduced to enhance the exterior appearance of the dwellings, with no cost incurred to the applicant.

The Planning Control Manger stated that discussions could be held with the applicant but did not consider this a proper ground to withhold permission, adding that brick-detailing was not a consistent feature in the street-scene.

A Member stated the proposed application had the potential to be a good development contingent on the quality of the workmanship, referencing the intended stone cills around the windows and the separation of brickwork on the first floor levels. A concern was raised as to unlit areas on the ends of the unadopted roads and the potential risks and vulnerabilities presented to members of the public. An analogy to the development at Two Steeples Square was cited where residents were said to be concerned about accessing the rear of their properties in unlit areas. It was also enquired as to who would be responsible for maintenance to the lighting on the unadopted roads.

The Planning Control Manager understood the concern raised and advised that a simple scheme of low-level lighting in the unlit areas could be approached through a condition. The unadopted areas would be maintained through a maintenance management company, inclusive of any lighting.

A Member said that the initial concerns the Member had in respect of the consultation process and overall design had been addressed, citing a final paragraph from the report (at page 21) insofar as the applicant had given due consideration to conversation. The Member enquired as to whether the recommendations of the Bat Survey had been brought to the applicant's attention in accordance with the report (at page 17).

The Planning Control Manager confirmed that the recommendations had been brought to the applicant's attention who had consulted on it. It was reiterated that there was a low potential for bat roosts and the applicant was aware of that response if terms of their protected species status.

The Chair seconded the proposal in favour of the recommendation and summarised the intended condition in respect of: landscaping; negotiations in terms of s 106 agreements, contributions, highways and chimneys; delegations to Officers; and lighting for unadopted roads/areas.

RESOLVED THAT:

Planning permission be granted subject to the aforementioned conditions, with ten votes in favour and one abstention from Councillor G A Boulter.

The Meeting Closed at 08:29 PM