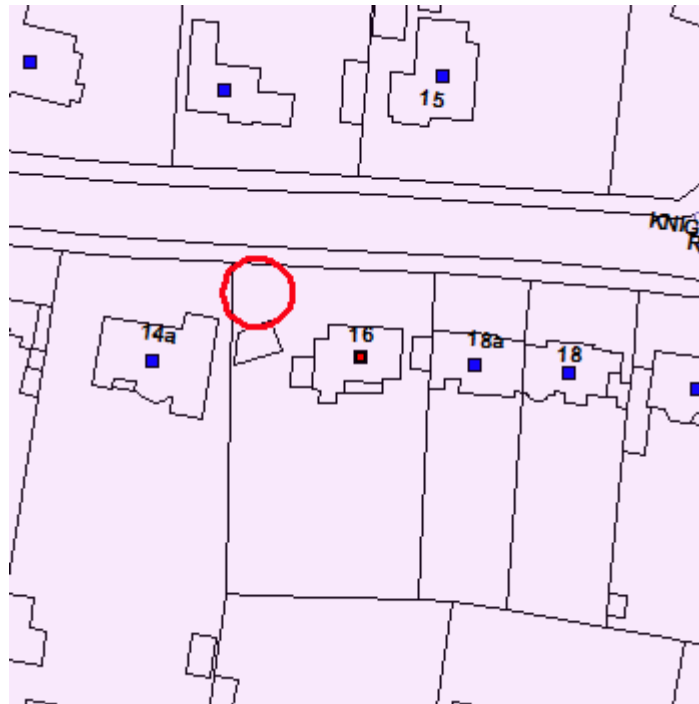


**Application Number    Address**

**Report Items**

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

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



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### Site and Location

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

### Description of proposal

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

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

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

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

### **Relevant Planning History**

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

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

### **Consultations**

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

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

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

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

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

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

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

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

## **Representations**

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

## **Relevant Planning Policies**

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

## **Planning Considerations**

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

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

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

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

### The Financial Assessment

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

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

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

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

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

### Liability for Compensation

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

### **Conclusion**

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

### **Implications Statement**

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

### **RECOMMENDATION: REFUSE**

#### The Reason(s) for refusal are:

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

#### Note(s) to Applicant :

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

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

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

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

**Development Control Committee Meeting**  
**14 April 2016**