

**MINUTES OF A MEETING OF THE DEVELOPMENT CONTROL COMMITTEE HELD AT THE
COUNCIL OFFICES, STATION ROAD, WIGSTON ON THURSDAY, 14 APRIL 2016
COMMENCING AT 7.10 PM**

<p><u>IN ATTENDANCE:</u> Chair - Councillor L A Bentley Vice-Chair - Councillor Mrs L M Broadley</p> <p>COUNCILLORS (9):</p> <table border="0"> <tr> <td>G S Atwal</td> <td>B Dave</td> <td>Dr T K Khong</td> </tr> <tr> <td>G A Boulter</td> <td>B Fahey</td> <td>Mrs H E Loydall</td> </tr> <tr> <td>M L Darr</td> <td>Mrs S Z Haq</td> <td>R E R Morris</td> </tr> </table> <p>OFFICERS IN ATTENDANCE (2):</p> <table border="0"> <tr> <td>S J Ball</td> <td>T Boswell</td> </tr> </table>	G S Atwal	B Dave	Dr T K Khong	G A Boulter	B Fahey	Mrs H E Loydall	M L Darr	Mrs S Z Haq	R E R Morris	S J Ball	T Boswell
G S Atwal	B Dave	Dr T K Khong									
G A Boulter	B Fahey	Mrs H E Loydall									
M L Darr	Mrs S Z Haq	R E R Morris									
S J Ball	T Boswell										

Min Ref.	Narrative	Officer Resp.
58.	<p><u>APOLOGIES FOR ABSENCE</u></p> <p>An apology for absence was received from Councillors F S Broadley, D M Carter, R F Eaton, D A Gamble, J Kaufman and T Barr.</p>	
59.	<p><u>APPOINTMENT OF SUBSTITUTES</u></p> <p>Councillors M L Darr and B Fahey substituting for Councillors D M Carter and T Barr, respectively.</p>	
60.	<p><u>DECLARATIONS OF INTEREST</u></p> <p>None.</p>	
61.	<p><u>MINUTES OF THE PREVIOUS MEETING HELD ON 17 FEBRUARY 2016</u></p> <p>RESOLVED THAT:</p> <p>The minutes of the previous meeting of the Committee held on 17 February 2016 be taken as read, confirmed and signed.</p>	
62.	<p><u>PETITIONS AND DEPUTATIONS</u></p> <p>None.</p>	
63.	<p><u>REPORT OF THE PLANNING CONTROL MANAGER</u></p> <p>The Committee gave consideration to the report (at pages 7 - 13) as delivered by the Interim Planning Control Manager which should be read together with these minutes as a composite document.</p> <p>1. Application No. 16/00022/TPO - 16 Knighton Rise, Oadby, Leicester, LE2 2RE</p>	

The Interim Planning Control Manager summarised the planning application's site and location, relevant planning history, consultations, representations and planning considerations, identifying the relevant planning policies as detailed in the report (at pages 7 - 13). He summarised the report's conclusion (at page 12), stating that the application was recommended for refusal of consent to remove the tree.

The Interim Planning Control Manager advised that if Members were minded to refuse consent, the applicant may well seek a claim for compensation in respect of the cost of additional works for the remediation of the building affected: however, any claim was said to be limited given that, first, the extent of the damage attribute to the tree in question was, on a balance of probabilities, negligible and, second, limited to the net additional loss or damage that may occur after the application was made or occurring within 12-months of the date of decision.

Councillor G A Boulter identified the non-permeable macadam ground surfacing as the most probable reason of desiccation in the clay soils and, therefore, the main attributable cause of movement of, and subsequent damage to, the building. He stated that the evidence before Members did not warrant the removal of the tree at the present time and that the most prudent course of action was to re-saturate the clay soils' moisture/water levels so to militate against the risks of further damage.

Councillor Mrs S Z Haq enquired as to how any claim for compensation was to be quantified, whether the claim could be contested by the Council and if a claim could be brought after the 12-months of the date of decision.

The Interim Planning Control Manager advised that there was no definitive formula in quantifying the sum of any claim and that any such claim was nevertheless limited to a net additional loss or damage within a proceeding 12-month period. He reported that the engineers' reports of January 2014 and December 2015 documented the damage to the building as "very slight" and "slight", respectively, and that any claim for subsequent damage, albeit a small sum, was to be proven on a balance of probabilities. He further advised that although a claim could be brought after the 12-month period, such a claim was not considered to be persuasive at the present time.

Councillor R E R Morris hypothetically enquired as to whether the supplanting of the tree, and its network of roots, would contribute to any resulting ground subsidence.

The Interim Planning Control Manager advised that any replacement tree planting would impose its own effects in relation to the building and that, to avoid a permanent detraction of amenity within the area, a like-for-like replacement would be sought.

Councillor R E R Morris moved for the refusal of consent to remove the tree.

Councillor M L Darr enquired as to the potential impact(s) of the tree's removal upon the building, should Members be minded to approve consent, and who was to be responsible for surveying the extent of any subsequent damage thereto.

The Interim Planning Control Manager advised that a comprehensive report

would be required from the same engineers detailing the extent of any subsequent damage. It was further stated the clay soils' water-table may contract and cause ground subsistence should the tree be removed and not suitably replaced.

Councillor M L Darr seconded Councillor R E R Morris' motion for refusal of consent to remove the tree.

Councillor Mrs H E Loydall stated that she was not content with the adequacy of the information provided in neither the report of the Planning Control Manager nor the evidence, or lack thereof, provided by engineers upon which to base an informed and sound decision at the present time. With reference to the proposal's description (at page 10) citing 'the presence of roots [as] (...) the most likely candidate for the cause of desiccation', and the case at common law of Wright v Horsham District Council [2011] UKUT 319 (LC), she warned of the potential of an ongoing "cash" implication borne to this Council should the tree be identified as the sole attributable cause.

The Interim Planning Control Manager advised that the minor extent of the damage hitherto sustained to the building was well-documented in two engineers' reports of which neither had established compelling evidence as to the tree being the sole attributable cause. He again reiterated that the extent of any financial liability was limited to the net additional loss or damage within a proceeding 12-month period.

The Chair expressed his reservations about the ambiguities contained in the report and was mindful about the potential financial implications that may beset the Council.

The Chair moved for the deferment of the application until a subsequent meeting of this Committee pending the instruction of legal advice upon the same.

Councillor Mrs H E Loydall seconded the Chair's motion for the deferment of the application.

Councillor G S Atwal enquired as to whether a planning condition could be imposed upon the applicant requiring him to underpin the building should Members be minded to approve consent, thus restricting the bringing of any future claim.

The Interim Planning Control Manager advised that a planning condition could not be properly used to otherwise or effectively fetter an applicant's rights subsisting at law.

Councillor R E R Morris withdrew his motion for refusal of consent to remove the tree.

Councillor M L Darr withdrew his seconding of Councillor R E R Morris' motion for refusal of consent to remove the tree.

UNANIMOUSLY RESOLVED THAT:

The application be **DEFERRED** to a subsequent meeting of the Committee.

THE MEETING CLOSED AT 7.49 PM



CHAIR

THURSDAY, 12 MAY 2016