

Application Number

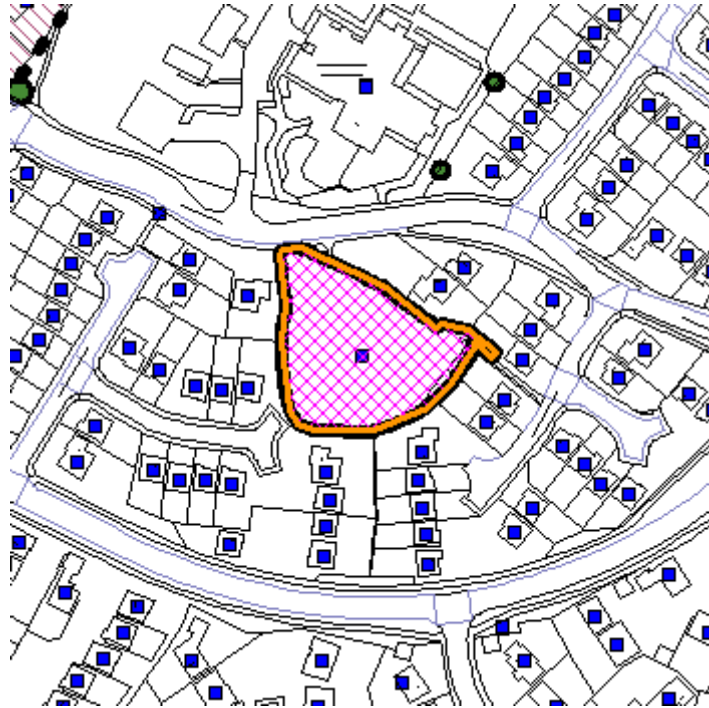
Address

Report Items

6a. 18/00006/TPO

Beaufort Way Spinney
Beaufort Way
Oadby
Leicestershire

6a.	18/00006/TPO	Beaufort Way Spinney Beaufort Way Oadby Leicestershire
	4 January 2018	Works to Woodland W2 (Oadby Grange Extension) Tree Preservation Order 1987 as per report.
	CASE OFFICER	Michael Bennetto



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Site and Location

The application site is located in Oadby Woodlands Ward on Beaufort Way. The site is comprised of a woodland spinney retained during the surrounding residential development and is subject to a woodland tree preservation order (ref: TPO/0046/WOODLAND)

The surrounding land use is primarily residential with Woodlands Primary School to the north. There are 3 permissive footpaths through the spinney with entrances from Beaufort Way, Cooper Gardens and Newby gardens providing a great deal of amenity to neighbouring properties as well as those frequenting the school.

The spinney is comprised of mixed species, predominantly Oak and Ash with an understory of Holly and Hawthorn.

Description of proposal

The proposed works have been taken from an arboricultural survey in the context of a planning application but applied for in the context of risk management.

The proposed works are extensive and best summarised as:

- * Reduce 9No. trees to standing stems between 1.5m and 6m
- * Crown reduce 7No. trees between 3 and 6m
- * Fell 1 Group of 23 Hawthorn
- * Thin 1 Group of Holly.
- * Sever Ivy and remove fragile deadwood.

The statutory determination period for this application expires on the 12 February 2018 and it is intended to issue a decision as soon as practicably possible after the committee meeting.

Relevant Planning History

None

Consultations

Leicestershire County Council (Ecology) :_No response received at time of writing report.

OWBC Client Services :_No response received at time of writing report.

OWBC Tree Warden : "I confirm I inspected this spinney on 20 January in my capacity as a tree warden .I do not have any objections to the application but please note that this does not in any way mean that I support any future application for planning permission for residential purposes."

Forward Planning (Policy) : The Oadby and Wigston Landscape Character Assessment (2005) identifies this area as Urban Character Area O(iv): Oadby Later Estates North and South. Paragraph 3.3.58 states:

'A decline in tree cover would decrease landscape quality of the area.'

In the adopted Core Strategy, Policy 5 Green Infrastructure states that:

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'The Borough Council will safeguard and enhance Strategic Green Infrastructure corridors connecting locations of natural heritage, green space biodiversity and other environmental interest.'

In the adopted 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.'

The proposed works will dramatically change the character of the area and therefore such substantial changes would not be in keeping with current policy or guidance for the landscape character of the area.

Representations

Neighbours have been informed and 3 notices placed close to the spinney entrances with 3 letters of representation (from 3 properties), 1 in support and 2 in objection of the proposal being received at the time of writing this report.

The date for the receipt of comments expires on the 6 February 2018

The reasons for objection can be summarised as follows: -

- * Intention to develop the spinney into further domestic dwellings
- * Destruction of local wildlife.
- * Severe impact on habitat.
- * TPO is in place to protect the trees from harm through development or excessive tree works.
- * Inconsistent with NPPF; protecting and enhancing valued landscapes, planning positively for the creation, protection and enhancement of green infrastructure, refusing permission for development resulting in the loss or deterioration of [...] aged trees found outside ancient woodland.
- * The work outlined in the Arb survey is excessive in the extreme to that required to mitigate the risk

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

- * 'Trees badly overhang the property and so the property is at risk. Leaves stuck in gutters. Water stuck, roof and walls going damage with rain water' – [support inferred]

Councillor Dean Gamble and Councillor Bhupendra Dave have requested the application go to Committee on the grounds of local public interest and concerns.

Relevant Planning Policies

National Planning Policy Framework

Chapter 11 – Conserving and enhancing the natural environment.

Oadby & Wigston Core Strategy

Core Strategy Policy 5: Green Infrastructure

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Core Strategy Policy 15 : Landscape and Character

Oadby and Wigston Local Plan

Supplementary Planning Document/Other Guidance

Planning Considerations

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

- * Purpose of the application
- * Tree Risk
- * Appropriate Management
- * Impact upon the TPO
- * Amenity
- * Justification of works
- * Protected Species

Purpose of the application

The submitted report is categorical in its status as being within the context of a proposed residential development (Ref: BeaufortWay_Oadby/01 section 1.1).

Following conversation with the applicant, the application was submitted for works to address neighbours' concerns regarding the adjacent trees:

- * Email of 10/01/2018 – "contact has been made from neighbouring residents with concerns for the safety of themselves and their property due to falling limbs from the trees situated on the land. My client urgently wants to resolve these issues so as not to put anyone at risk of injury or damage to property, along with the protection of relevant trees."
- * Email of 12/01/2018 – "From our knowledge, the survey was undertaken by the arboriculturist (taking) into account that the land is regularly accessed by members of the public, including school children as a local shortcut. As a result of this the report has been written so that the natural footpaths are also considered as well as the primary concern of the tree health."

Our client is ultimately looking to safeguard the public accessing his land and his surrounding neighbours, as they want to reduce the risk of injury or damage to others and their property. We want to continue with the works recommended by the arboriculturist so that the land becomes safe, however if my client is refused the opportunity to have this work undertaken, it must be assumed that the Local Authority are willing to take responsibility for any damages caused by the areas highlighted in the report."

Since clarified by the applicant, the works submitted for have been assessed with respect to risk and safety with regard to the owners' duty of care and concerned neighbours.

Tree Risk

The National Tree Safety Group publishes the Common Sense Risk Management of Trees:

- * "This document may be presented to a court documentation in any case involving death or personal injury caused by a falling tree or branch. "

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- * "The NTSG believes that one fundamental concept should underlie the management of risks from trees. It is that the evaluation of what is reasonable should be based upon a balance between benefit and risk. This evaluation can be undertaken only in a local context, since trees provide many different types of benefit in a range of different circumstances. "
- * "The requirement under health and safety legislation is to have a suitable and sufficient risk assessment, and to apply measures that are reasonable and practicable. "

Disproportionate works to the risk posed should be refused, we must also be aware that failure to permit works on safety grounds can leave liability with the council, however where more proportionate measures have been proposed any failure to complete said works would return liability to the owner.

Appropriate Management

For applications relating to woodland, statutory advice is that the authority "must grant consent so far as accords with good forestry practice unless it is satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area."

In consideration of 'good forestry practice', due to the size and position of this site I would deem typical forestry processes inappropriate. I believe the spinney is better considered as an amenity asset rather than a working woodland.

The application has failed to show appropriate management in this instance, typically a Woodland Management Plan or Tree Condition Survey are considered suitable.

Small, scattered woodlands deliver a range of landscape, biodiversity and other benefits but remain vulnerable to neglect, due to the marginal revenues from managing them and pressures from development.

Impact upon the TPO

A tree preservation order for a woodland extends to all trees present and future within a woodland, within the defined area, including natural regeneration – "A tree is to be so regarded at all stages of its life, subject to the exclusion of a mere seed" (case: *C1/2015/1102*). The purpose of woodland Orders are to safeguard the woodland unit as a whole and covers all tree species. The woodland category should not hinder beneficial woodland management

Amenity

There would be a noticeable loss of amenity following the proposed works. Although the main tree group would remain, the form and condition of remaining trees would be impaired and apparent. A degree of protection is available in that the TPO covers all future trees.

Justification

Insufficient justification/evidence in support has been supplied, particularly pertaining to the presence of decay fungi where the report states 'fungal brackets on scaffold limbs', with no description or aspect (i.e Northern stem, second primary limb at 5m) or photographs to support it.

Protected Species

None apparent during site inspection. Ecology consultation not returned (at the date of writing)

Site visit and assessment of the application.

All works to remove deadwood and sever ivy have been removed from the accompanying report as they are exempt and do not require permission. (Trees T:2,3,4,5,6,9,10,12,16,18,20,23,26,29,30,34 and 35)

The remaining trees were then assessed against the specification provided:

- T1: Asymmetric canopy with tight included union and abrupt bends – As applied for.
 - T7: Very slender on woodland edge, reduce to 1.5m - Applied for 4m.
 - T8: Quite slender with extended growth on woodland edge. Reduce by 3m to improve form – As applied for.
 - T11: Tree is not dead. Previously 'reduced' to 3-4m standing stem. Phototropic regrowth over adjacent garden and decay seen in main stem. Re-pollarding the regrowth will reduce the loading forces and thus reduce the chance of failure due to the decay in the main stem.
 - T13: Reduction is not appropriate; the tree is unlikely to fail into an adjacent property. Slender form trees *within* woodland are to be expected.
 - T14: No observed or evidenced decay fungus or previous attachment points. A primary limb has grown slightly overextended and is becoming dominant; reducing this limb by 3-4m should rebalance the canopy and reassert main stem apical dominance.
 - T15: Previously topped, the established regrowth has several upright branches vying for position which could fail mechanically (lever arm failure) if allowed to mature. A reduction of 2m in height and 1m from the boundary should abate the upward growth in favour of a denser, compact crown.
 - T17: Standing dead stem. Minimal risk posed, removal is contrary to best practice. – Location incorrect on plan.
 - T19: Tree with impaired condition, with an asymmetric canopy biased over the adjacent dwelling. Cutting it down to a 3-4m standing stem would most likely result in the trees demise. The 2 main stems break into multi-stem unions at approximately 7m. Pollarding above this point would avoid making main stem cuts and reducing the risk to an acceptable level and can be included within a pollarding cycle/management strategy.
 - T21: *I.Hispidus* bracket observed on primary limb over highway, associated with previous reduction, reduce by up to 3m - As applied for.
 - T22: A 50% reduction would be excessive and not in accordance with best practice. 3m height reduction and 1m width reduction as well as removal of deadwood should be appropriate.
 - T24: See T19.
 - T25: Fibre buckling has little to no increased risk.
 - T27: Out of falling distance. Works not justified.
 - T28: See T27.
 - T31: See T13.
 - T32: See T13. – tagged as 0033
 - T33: See T13. – tagged as 0035
-
- G1: Prune for access so far as required to survey
 - G2: 'Remove tree' applied for. My count is that G2 comprises 23 trees, none of which pose a significant risk; as such their removal is not proportionate.

Conclusion

A high level of management will be required on a site such as this by the land owner; there is 223 linear metres of boundary with approximately 80% residential and 20% adjacent Beaufort Way road and directly opposite Woodland Grange Primary School with parents and coaches parking alongside. There are 3 distinct entrances with permissive footpaths through the spinney.

We can note that in the deed to the land it stipulates that owner is obliged to maintain a stock proof boundary; we wouldn't consider this as enforceable or of benefit to the community and it could be at expense far beyond maintaining a healthy tree stock.

The works applied for have been taken out of context; the submitted report is in the context of a residential development while the works submitted for are to address risk following neighbours' concerns. Intention to develop the spinney can be considered little more than conjecture and should not be a factor when considering the application.

When considering the main issues relating to this application I would suggest the most efficient and judicious outcome is to acknowledge that trees inherently pose a degree of risk and notwithstanding the submitted details permit works that are proportionate to the risk posed. In doing so the council would not be hindering the carrying out of safety works but encouraging a proportionate response to presented risk. This approach would also avoid as far as reasonably practicable the destruction of habitat and its impact on local wildlife. In other words, the severity of works can be reduced while still addressing the risk.

Works proposed are considered neither beneficial woodland management, nor in line with good forestry practise. That being said there is a justifiable reason for some works to be carried out to fulfil the owners duty of care for adjacent land owners and those who pass through the spinney, it's the balance of a proportionate response to the risk presented that must be assessed.

In order to prevent any undue destruction of habitat and impact on wildlife I would propose a more conservative set of works be granted as specified by an accompanying report so far as necessary to reduce the presented risk to a suitable level.

In summary, after due consideration of the site and its use I have made the first phase of a management plan that I feel makes a proportionate response while offering an acceptable reduction in risk, adequate to afford the owner reasonable precaution until a woodland management plan or tree inspection regime has been put into place. I will make myself available to discuss the matter with the suitably appointed person/arboriculturist

Recommendation

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

Implications Statement

Health	No Significant implications
Environment	Environmental impact has been taken into account when assessing the application.
Community Safety	No Significant implications
Human Rights	There may be implications under Article 8 and Article 1 of the First Protocol regarding the right of respect for a person's private and family life and

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	home, and to the peaceful enjoyment of possessions. However, these issues have been taken into account in the assessment of this application.
Equal Opportunities	No Significant implications
Risk Assessment	Risk posed has been taken into account when assessing the application.
Value for Money	No Significant implications
Equalities	No Significant implications
Legal	Liability has been taken into account when assessing the application.

RECOMMENDATION: GRANTS

Subject to the following condition(s)

- 1 Notwithstanding the submitted details the tree works shall be undertaken strictly in accordance with the recommended works as specified by the Arboricultural Officer dated **** attached to, and forming part of, this consent.
Reason: To safeguard the appearance and future well-being of the tree(s) in the interests of the visual amenity of the area in accordance with Landscape Proposal 1 of the Oadby and Wigston Local Plan.
- 2 The works to which this consent relates shall be begun before the expiration of two years from the date of this consent.
Reason: To accord with the provisions of the Town and Country Planning (Tree Preservation) Regulations 2012.
- 3 The works shall be carried out in accordance with BS3998:2010 'Tree Works Recommendations' which revises and supersedes all previous issues and includes updated information based on the very latest Arboricultural research. Section 7 refers specifically to pruning and related work and gives detailed guidance about crown thinning, crown reduction, number of pruning cuts in relation to trunk diameter and the correct targeting of such cuts.
Reason: To safeguard the appearance and future well-being of the tree(s) in the interests of the visual amenity of the area and in accordance with Landscape Proposal 1 of the Oadby and Wigston Local Plan.

Note(s) to Applicant :

- 1 Nesting birds and bats, their roosts and their access to these roosts, are protected under the Wildlife and Countryside Act 1981 and the Conservation (Natural Habitat etc) Regulation 1994. Therefore, should birds or bats be present, works should be deferred until the late summer/autumn.

2 Appeals to the Secretary of State

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

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

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

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

Report as stipulated in condition 1 to accompany decision notification:

Notwithstanding the submitted details in application 18/00006/TPO, the tree works shall be undertaken strictly in accordance with the recommended works as specified within this report.

This report should be read with reference to the submitted documents for this application.

Works applied for that have not been included within this report are either; exempt from requiring permission (ivy and deadwood), or insufficient evidence/reasoning provided to justify the proposed.

Recommended works included in this report take reference from BS3998:2012 and the National Tree Safety Group – Common sense risk management of trees.

Due to discrepancies in the map provided this report references the tree tag number (where possible). – T17 = location incorrect, T32 = tag33, T33 = tag35, T35 = tree not present.

The site is subject to a Woodland TPO, indicated as W2 of Oadby and Wigston Borough Council (Oadby Grange Extension) Tree Preservation Order 1987.

Tree/ Group	Comments	Recommended works
T1	Asymmetric canopy toward driveway and footpath with a tight included union at 2m.	Reduce to 1.5m standing stem.
T7	Tree is overly slender for the position.	Pollard at 1.5m.
T8	Tall slender tree with overextended limbs over adjacent property.	Crown reduce up to 3m.
T11	This tree is not dead. Previously unsympathetically reduced to a standing stem at 4m, creating a large stem wound with signs of decay progression. I suggest re-pollarding and establishing an appropriate re-pollarding cycle for the tree, to reduce the loading forces and retaining habitat.	Re-pollard
T14	Slight asymmetric canopy due to a primary limb growing towards adjacent property.	Reduce overextended limb over adjacent property by 3-4m
T15	Unsympathetically reduced oak, previously topped.	Crown reduction, reducing the height by 2m and overhanging limb by 1m.
T19	Asymmetric canopy (S) biased over adjacent property. Reduction to a standing stem is not appropriate to the risk presented and would require making cuts to the main stem.	Pollard at approximately 7m, between 1-2m from main bole.
T21	Previously reduced. Asymmetric canopy over road used for parking. <i>I.Hispidus</i> bracket on SW limb at 4m associated with previous reduction.	Crown reduce up to 3m

T22	Previously reduced away from property, poorly. <i>I.Hispidus</i> on western limb at 5m associated with previous pruning.	Crown reduce; 3m height reduction, 1m width reduction. Deadwood.
T24	Asymmetric canopy (W) over adjacent gardens. <i>I.Hispidus</i> in main stem.	Pollard at approx. 5m, 1m from main bole.
G1		Prune as far as necessary to allow inspection of adjacent trees.

It's recommended to remove deadwood as necessary (BS3998:2010 7.3), to include that which overhangs or is within falling distance of adjacent properties and to sever ivy on trees within falling distance of a boundary in order to improve surveying capacity. It's recommended to retain the standing dead stems of trees; T17 (as is) and T23 (reduced to 2m+ habitat pole).

All works are to be carried out by a suitably qualified and insured Arborist to BS3998:2010 'Tree works – recommendations' which revises and supersedes all previous issues and includes updated information based on the very latest Arboricultural research. Section 7 refers specifically to pruning and related work and gives detailed guidance about deadwood, standing dead stems, crown thinning, crown reduction, pollarding, number of pruning cuts in relation to trunk diameter and the correct targeting of such cuts.

As stated, the submitted Arboricultural survey, and thus the associated recommended works are in the context of development. Recommended reports in the context of safety (as indicated by the applicant) and correct management include Woodland Management Plans and Tree Condition Surveys.

A Woodland TPO protects all trees present and future within the defined area, including natural regeneration and covers all stages of a trees life, subject to the exclusion of a mere seed. Future applications should be made so far as accords with the practice of good forestry and to secure the maintenance of the special character of the woodland.

This report does not constitute a valid Tree Condition Survey for insurance purposes.

BACKGROUND PAPERS

1. 18/00006/TPO

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