



<b>Development Control Committee</b>	<b>Thursday, 30 August 2018</b>	<b>Matter for Decision</b>
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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)**

<b>Purpose of Report:</b>	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.
<b>Report Summary:</b>	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.
<b>Recommendation(s):</b>	<b>That The Borough of Oadby and Wigston (The Yews, Oadby) Tree Preservation Order 2018 be confirmed with modifications.</b>
<b>Responsible Strategic Director, Head of Service and Officer Contact(s):</b>	<p>Anne Court (Chief Executive) (0116) 257 2606 <a href="mailto:anne.court1@oadby-wigston.gov.uk">anne.court1@oadby-wigston.gov.uk</a></p> <p>Adrian Thorpe (Head of Planning, Development and Regeneration) (0116) 257 2645 <a href="mailto:adrian.thorpe@oadby-wigston.gov.uk">adrian.thorpe@oadby-wigston.gov.uk</a></p> <p>Michael Bennetto (Arboricultural Officer) (0116) 257 2697 <a href="mailto:michael.bennetto@oadby-wigston.gov.uk">michael.bennetto@oadby-wigston.gov.uk</a></p>
<b>Corporate Priorities:</b>	Balanced Economic Development (CP3) Green & Safe Places (CP4) Wellbeing for All (CP5)
<b>Vision and Values:</b>	Accountability (V1) Customer Focus (V5)
<b>Report Implications:-</b>	
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.
<b>Statutory Officers' Comments:-</b>	
Head of Paid Service:	The report is satisfactory.
Chief Finance Officer:	The report is satisfactory.
Monitoring Officer:	The report is satisfactory.
<b>Consultees:</b>	All persons interested in the land affected by the Order.
<b>Background Papers:</b>	<a href="#">Town and Country Planning Act 1990 Part VIII, Chapter I, Trees</a> <a href="#">The Town and Country Planning (Tree Preservation)(England) Regulations 2012</a> <a href="#">Human Rights Act 1998</a> <a href="#">Protocol No. 1 to the European Convention on Human Rights</a>
<b>Appendices:</b>	<b>1.</b> TPO - The Yews, Oadby (Provisional) <b>2.</b> 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.