

**Development Control Committee****Thursday, 14 February 2019****Matter for Information and Decision****Report Title:****The Borough Council of Oadby and Wigston (The Firs, Wigston) Tree Preservation Order 2018****Report Author(s):****Michael Bennetto (Arboricultural Officer)**

Purpose of Report:	The purpose of this report is to seek a decision from the Committee to confirm or otherwise The Borough Council of Oadby and Wigston (The Firs, Wigston) Tree Preservation Order 2018 ("the Order") which was made on 20 August 2018.
Report Summary:	The Order was created as it was considered expedient in the interests of amenity. The trees covered provide significant amenity and have a good safe useful life expectancy in this prominent location.
Recommendation(s):	That the Borough Council of Oadby and Wigston (The Firs, Wigston) Tree Preservation Order 2018 be confirmed without modification.
Responsible Strategic Director, Head of Service and Officer Contact(s):	Anne Court (Chief Executive) (0116) 257 2606 anne.court1@oadby-wigston.gov.uk Adrian Thorpe (Head of Planning, Development and Regeneration) (0116) 257 2645 adrian.thorpe@oadby-wigston.gov.uk Michael Bennetto (Arboricultural Officer) (0116) 257 2697 michael.bennetto@oadby-wigston.gov.uk
Corporate Priorities:	Balanced Economic Development (CP3) Green & Safe Places (CP4) Wellbeing for All (CP5)
Vision and Values:	Accountability (V1) Customer Focus (V5)
Report Implications:-	
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.
Statutory Officers' Comments:-	
Head of Paid Service:	The report is satisfactory.
Chief Finance Officer:	The report is satisfactory.
Monitoring Officer:	The report is satisfactory.
Consultees:	All persons interested in the land affected by the Order.
Background Papers:	Town and Country Planning Act 1990 Part VIII, Chapter I, Trees. The Town and Country Planning (Tree Preservation)(England) Regulations 2012 Human Rights Act 1998 Protocol No. 1 to the European Convention on Human Rights Application No. 03/00562/8M
Appendices:	1. TPO - The Firs, Wigston (Provisional)

1. Information

- 1.1 A provisional Order was made on the 20 August 2018. In compliance with the 2012 Regulations, copies of the Order were served on the owners of the trees and adjoining neighbours on 22 August 2018.
- 1.2 The Order was made in reaction to the apparent threat to the trees upon seeing heavy machinery in place to remove the soft landscaping to extend parking provisions at No.2 and No.3 The Firs, similar to that carried out previously by the owner-occupier of No.1 The Firs.
- 1.3 The Firs Public House used to stand on this site. It was permitted to be demolished and 45 dwellings constructed in its place (application no. 03/00562/8M). Conditions 7, 8, 9 of the planning permission specified the requirement for: protective fencing, the retention of shrubs and hedges; and that no trees were to have works carried out on them until 12 months after completion. Condition 10 specified that the garages were to be kept continuously in use as garages and not to be converted for any other purpose.
- 1.4 Building Control completion certificates were issued between March and May 2005 for the respective properties and all plots in March 2007 which would imply the '12 months after completion' ended in March 2008.

2. Objections

- 2.1 Objections have been received from two of the properties affected by the Order.
- 2.2 The owner-occupier of No.1 The Firs made an objection on the grounds that:
 - (i) The tree has been unsympathetically pruned in the past;
 - (ii) Branches have fallen off the tree/been hit by traffic;
 - (iii) Roots are causing upheave to the front porches;

- (iv) Pine needles have caused a car engine bay fire;
 - (v) Pine trees drop pine cones;
 - (vi) Concerned parents have complained that the berries are poisonous;
 - (vii) The pavement is messy; and
 - (viii) The cost of applying for works.
- 2.3 The owner-occupier of No.3 The Firs submitted representation on the same grounds above.
- 2.4 These objections are addressed below.
- 3. Officers' Comments**
- 3.1 Some of the objections can be categorised as 'causing harm by virtue of their natural characteristics'. The courts expect a reasonable person to accept the fall of leaves etc. as a seasonal occurrence over which the tree owner has no control (i.e. they are trees, that's what they do).
- 3.2 (i) - Tree T1 is a middle-age Yew tree which has been pruned asymmetrically during the construction. As conditioned within the development's planning permission, no works were to be carried out on the trees without prior permission. No permission for such tree works is apparent from records. Fortunately, Yew trees are one of the few coniferous species that regenerate from stem wood and could, if left untouched, form a full canopy again.
- 3.3 (ii) - It is claimed that passing buses have broken off encroaching branches. Where a tree encroaches onto the highway there is no responsibility, per se, to abate the nuisance. However, the Highway Authority can require the tree owner to remove branches causing an obstruction and, if necessary, carry out the work itself at the owner's expense. A tree owner has a duty of care to take reasonable care to avoid acts or omissions which he or she could reasonably foresee may result in harm or injury to those using the highway.
- 3.4 (iii) - It is claimed that the trees are causing upheave of the front porch. No evidence has been supplied or observed to support this claim. Any development should be built appropriately for the surroundings. While certain porches do not require Building Regulation approval, sub-standard building practice is not an admissible reason for tree removal. It is imperative that structures are built in accordance with Building Regulations regardless of any exemptions.
- 3.5 (iv) - It is claimed that fallen pine needles caused a car engine bay fire. To Officers' knowledge, there has never been an instance of engine bay fires caused by the accumulation of pine needles. It would be expedient for a responsible car owner to remove accumulated pine needles from their car. If this is of such concern, it is recommended that the property garages are utilised. Ample covered parking was afforded to each property and conditioned for retention within the original planning permission.
- 3.6 (v) - Fallen leaves, fruit, cones and flowers do not constitute a nuisance in the legal sense. The courts expect a reasonable person to accept the fall of leaves etc. as a seasonal occurrence over which the tree owner has no control.
- 3.7 (vi) - It is claimed that parents have complained about the fallen berries from the Yew tree T1. Parents are responsible for the actions of their child until aged 18. The branches have at least 2m clearance to the ground. It is the responsibility of the parent to ensure their child does not pick berries off the tree or ground and eat them. Poisonous plants are commonplace. Existing statute pertains to the browsing of animals on poisonous plants and is based on whether there is a requirement to maintain a stock-proof hedge.
- 3.8 (vii) - Regarding the pavement, while it may technically be the responsibility of the tree

owner, this has been passed to Street Scene and Operational Services to action.

- 3.9 (viii) - Complaint is also made of the need for costly applications. It should be noted that applications for tree works are free of charge regardless of whether protected by a TPO or by virtue of being in a Conservation Area.
- 3.10 Managing the risk from trees is the responsibility of the owners and managers of the land on which they grow. The law outlines a landowner's responsibility and their 'duty of care'. This is to take reasonable care to avoid acts or omissions which he or she could reasonably foresee may result in harm or injury. When a tree owner fails to exercise his or her responsibility, the result may be a claim for negligence.
- 3.11 The owner of the Yew tree (T1) has:

'already taken measures to start removing the tree by way of chemical treatment [...] applied to the base of the tree to aid the removal of the tree'.

This has never been considered good practice for any tree removal. To willingly and knowingly poison a standing tree is to create a hazard; this is both negligent and dangerous. Yew trees are, however, particularly resilient and vigorous and the tree is expected to survive but will continue to be monitored. The owner has been made aware that any further works amounting to prohibited activities is a prosecutable offence.

4. Conclusions and Recommendations

- 4.1 The trees protected by the Order are important to the site and offer very good amenity value. They were retained as part of the original development where the Public House was demolished and 45 dwellings constructed. The trees were recommended for protection by the County Council's Arboricultural Officer in 2003 as part of the planning application.
- 4.2 The majority of the issues raised in objection can be categorised as causing harm by virtue of their natural characteristics. Fallen leaves, fruit, cones and flowers do not constitute a nuisance in the legal sense. The courts expect a reasonable person to accept the fall of leaves etc. as a seasonal occurrence over which the tree owner has no control.
- 4.3 A TEMPO assessment (Tree Evaluation Method for Preservation Orders) was carried out. This is a systematised assessment tool for TPO suitability that is used to help guide decision making. It takes amenity and expediency into account, providing appropriate benchmark ratings for inclusion in a TPO whereby a score of 12-15 is defendable and 16+ definitely merits a TPO. As such, trees T1 and T2 scored 20, T3 scored 19 and T4 scored 13.
- 4.4 It is therefore recommended that the Order be confirmed without modification.