



**APPEALS AND REVIEWS COMMITTEE**

This meeting will be recorded and the sound recording subsequently made available via the Council's website: [charnwood.gov.uk/pages/committees](http://charnwood.gov.uk/pages/committees)

Please also note that under the Openness of Local Government Bodies Regulations 2014 that other people may film, record, tweet or blog from this meeting. The use of any images or sound recordings is not under the Council's control.

To: Councillors Capleton (Chair), Howe (Vice-Chair), Charles, K. Harris and Needham (for attention)

All other members of the Council  
(for information)

You are requested to attend the meeting of the Appeals and Reviews Committee to be held in Committee Room 2 - Council Offices on Monday, 30th September 2019 at 5.00 pm for the following business.

Chief Executive

Southfields  
Loughborough

20th September 2019

**AGENDA**

1. APOLOGIES
2. MINUTES OF THE PREVIOUS MEETING 3 - 4  
To receive and note the minutes of the previous meeting.
3. QUESTIONS UNDER OTHER COMMITTEE PROCEDURES 12.8
4. DISCLOSURES OF PECUNIARY AND PERSONAL INTERESTS

5. BOROUGH OF CHARNWOOD (LAND AT ASHBY ROAD,  
LOUGHBOROUGH LE11 3QU) TREE PRESERVATION ORDER  
2019

5 - 19

A report of the Head of Strategic Support is attached.

## **PROCEDURE**

*The procedure to be followed in considering objections to Tree Preservation Orders is as follows:*

(a) *The Head of Strategic Support or his/her representative will introduce the report before the Appeals and Reviews Committee which will include written statements by both parties (i.e. the Head of Planning and Regeneration and the objector(s)).*

(b) *The Head of Planning and Regeneration or his/her representative will present his/her case for confirming the order with or without modifications.*

*Members of the Appeals and Reviews Committee and the objector(s) may then ask him/her questions.*

(c) *The objector(s) will present his/her case, if he/she wishes to do so.*

*Members of the Appeals and Reviews Committee and the Head of Planning and Regeneration or his/her representative may then ask the objector(s) questions.*

(d) *Members of the Appeals and Reviews Committee will ask the parties for any additional information or clarification they require.*

(e) *The Appeals and Reviews Committee, with the advice of the Head of Strategic Support or his/her representative as necessary, will then decide whether or not the order should be confirmed and, if so, whether with or without modifications.*

*The parties will not participate in the meeting at this stage and each will have the options of sitting in the public gallery or leaving the meeting.*

## APPEALS AND REVIEWS COMMITTEE 11TH SEPTEMBER 2019

PRESENT: The Chair (Councillor Capleton)  
The Vice Chair (Councillor Howe)  
Councillors Charles and K. Harris

L. Pinsent (Objector)

Team Leader Natural & Built Environment  
Senior Ecological Officer  
Principal Solicitor (KH)  
Democratic Services Officer (LS)

APOLOGIES: Councillor Needham

The Chair stated that the meeting would be recorded and the sound recording subsequently made available via the Council's website. He also advised that, under the Openness of Local Government Bodies Regulations 2014, other people may film, record, tweet or blog from this meeting, and the use of any such images or sound recordings was not under the Council's control.

*Note: The sound recording device failed to record this meeting.*

### 1. MINUTES OF THE PREVIOUS MEETING

The minutes of the meeting of the Committee held on 1st April 2019 were received and noted.

### 2. QUESTIONS UNDER OTHER COMMITTEE PROCEDURES 12.8

No questions had been submitted.

### 3. DISCLOSURES OF PECUNIARY AND PERSONAL INTERESTS

No disclosures of interest were made.

### 4. BOROUGH OF CHARNWOOD (2 AND 6 MILL HILL LEYS, WYMESWOLD) TREE PRESERVATION ORDER 2019

Considered a report of the Head of Strategic Support setting out details of the Tree Preservation Order served on the above site, the objection received to the Order and the comments of the Head of Planning and Regeneration on the issues raised by the objection (item 5 on the agenda filed with these minutes).

Assisting with consideration of the report: Principal Solicitor.

Both the Head of Planning and Regeneration's representatives and the objector attended the meeting to put forward their cases and answer the Committee's questions.

The Committee considered this matter in accordance with the “Procedure for Considering Objections to Tree Preservation Orders” set out in the Council’s Constitution and on the agenda for this meeting.

**RESOLVED** that the Borough of Charnwood (2 and 6 Mill Hill Leys, Wymeswold) Tree Preservation Order 2019 be confirmed.

Reason

Having considered, in accordance with the procedure set out in the Council’s Constitution, the objection to the Order, the Committee considered that the reasons put forward for not protecting the tree did not outweigh the contribution it made to the amenity of the area and that the tree should therefore be protected.

NOTES:

1. No reference may be made to these minutes at the Council meeting on 4th November 2019 unless notice to that effect is given to the Democratic Services Manager by five members of the Council by noon on the fifth working day following publication of these minutes.
2. These minutes are subject to confirmation as a correct record at the next meeting of the Appeals and Reviews Committee.

## APPEALS AND REVIEWS COMMITTEE 30TH SEPTEMBER 2019

### Report of the Head of Strategic Support

ITEM 5 BOROUGH OF CHARNWOOD (LAND AT ASHBY ROAD,  
LOUGHBOROUGH LE11 3QU) TREE PRESERVATION ORDER  
2019

The above Order relates to woodland adjacent to the filling station on Ashby Road, Loughborough. Concerns were expressed to the Council about clearance of the woodland and a site visit on 3rd May 2019 established that approximately 1700m<sup>2</sup> of woodland had been clear felled and the arisings removed. An area of woodland to the rear of the filling station remained intact at the time of the site visit. The Council's Head of Planning and Regeneration considered it appropriate to ensure that the woodland within the area shown on the Order (W1), which makes a significant contribution to the visual amenity of the area, is properly protected and retained in a satisfactory manner through the making of this Tree Preservation Order. All trees within area W1, including seedlings, saplings and stumps, are protected by the Order.

Therefore, an Order was made on 8th May 2019 to provisionally protect the trees.

A copy of the Order is attached at **Annex 1**.

An objection to the Order was received from the agent acting on behalf of the owner of the site on 29th May 2019.

A copy of the objection is attached at **Annex 2**.

The Head of Planning and Regeneration's comments on the issues raised in the objection are attached at **Annex 3**.

In conclusion, the Committee is asked to consider the issues raised by the objector and the comments of the Head of Planning and Regeneration in accordance with the procedure set out and to determine whether or not the Tree Preservation Order should be confirmed and, if so, whether with or without modification.

Officer to contact:                      Laura Strong  
Democratic Services Officer  
01509 634734  
[laura.strong@charnwood.gov.uk](mailto:laura.strong@charnwood.gov.uk)

**Town and Country Planning Act 1990**  
**The Borough of Charnwood**  
**(Land at Ashby Road, Loughborough LE11 3QU)**  
**Tree Preservation Order 2019**

The Charnwood Borough Council, in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order:

**Citation**

1. This Order may be cited as The Borough of Charnwood (Land at Ashby Road, Loughborough LE11 3QU) Tree Preservation Order 2019.

**Interpretation**

2. (1) In this Order "the authority" means the Charnwood Borough Council.
- (2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

**Effect**

3. (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.
- (2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall:
  - (a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or
  - (b) cause or permit the cutting down, topping, lopping, wilful damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

**Application to trees to be planted pursuant to a condition**

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 8th day of May 2019

The Common Seal of the Charnwood Borough Council  
was affixed to this Order in the presence of:

  
.....



2019-20-20

**SPECIFICATION OF TREES**

**Trees specified individually**  
(encircled in black on the map)

Reference on map	Description	Situation
	None	

**Trees specified by reference to an area**  
(within a dotted black line on the map)

Reference on map	Description	Situation
	None	

**Groups of trees**  
(within a broken line on the map)

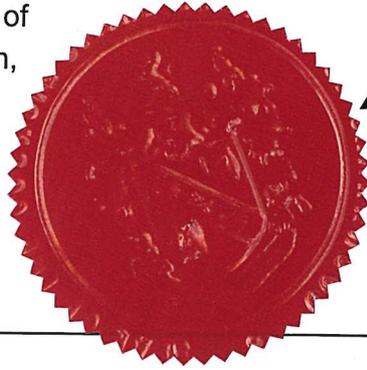
Reference on map	Description (including number of trees in the group)	Situation
	None	

**Woodlands**  
(within a continuous black line on the map)

Reference on map	Description	Situation
W1	All trees in area W1, including seedlings, saplings and stumps.	OS grid reference SK 50147 18363

2019-20-20

I certify this map shows the tree referred to in the first schedule of the Borough of Charnwood (Land at Ashby Road Loughborough, LE113QU) Tree Preservation Order 2019



*mo*

Authorised signatory .....



Borough of Charnwood  
(Land at Ashby Road Loughborough,  
LE113QU)

Tree Preservation Order 2019

R Bennett Dip. TP. MRTPI  
Head of Planning & Regeneration  
Borough of Charnwood  
Southfields  
Loughborough  
Leics. LE11 2TN  
Date: 3 December 2018  
Scale: 1:1250  
Prep: RMS

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MJB

29 May 2019

Charnwood Borough Council  
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Loughborough  
LE11 2TX

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LONDON  
BIRMINGHAM  
BRISTOL  
EDINBURGH  
HUNTINGDON  
MANCHESTER

Dear Sir/Madam

**RE: Charnwood Service Station, Ashby Road, Loughborough LE11 3QU**

We act on behalf of the MFG and have been instructed to object to the Tree Preservations Order (TPO) issued on the above site dated 8<sup>th</sup> May 2019 and enclosed for your reference. This letter should be read in conjunction with correspondence with Alltree Consultancy also enclosed.

By way of background, before the trees were chopped down our client instructed Alltree Consultancy to undertake a tree survey on the site, and SLR to undertake an Ecology Report.

In respect of the tree survey, Alltree Consultancy undertook a site visit on the 4<sup>th</sup> December 2018 to assess the trees on the site. In this process, as explained within their note enclosed, Alltree Consultancy undertook a desk-top review which showed that there were no TPOs on the site, and the area was also not in a Conservation Area (CA).

Following the site visit, Alltree Consultancy noted in their final report – *‘that many of the trees were of poor condition, particularly the area to the west of the service station.’*

Following issue of the report our client instructed PJ Landscaping to clear a section of the site to the west of the service station. The instructed clearance finished in late April. As such, what remains are felled trees and stumps which do not, by themselves, or even in the wider context of the area of land to the south, warrant protecting. Nevertheless, following this the blanket TPO was issued on the site dated 8<sup>th</sup> May 2019.

Considering the above, we alongside Alltree Consultancy, do not consider a TPO over the entire site is appropriate and beneficial for the ongoing protection of the remaining trees. However, it is noted that a TPO over the southern area of land, where unfelled trees remain, would be beneficial for their protection (should the LPA feel the trees are of special protection).

The client acted reasonable and undertook the necessary tree surveys and ecology work before instructing the area of trees to be felled. The site is not in a CA and there were no protected trees and therefore, we understand they were felled lawfully in terms of planning legislation.

RAPLEYS LLP IS REGISTERED AS A  
LIMITED LIABILITY PARTNERSHIP  
IN ENGLAND AND WALES

REGISTRATION NO. OC508311

REGISTERED OFFICE:  
FALCON ROAD, HINCHINGBROOKE  
BUSINESS PARK, HUNTINGDON  
PE29 6FG

REGULATED BY RICS

Considering the above, the client acted reasonable and followed correct procedure in assessing and removing the trees on the site. Therefore, the TPO over the area of land which has been felled, is unnecessary and not suitable. As such, the TPO should be lifted in this location.

It is the client's intention to manage and retain the remained of the trees. In doing this, they would like to work with the Local Authority in developing a landscape scheme which respects in local area. They have development aspirations for the site and will shortly be submitting a pre-application to gather officer feedback.

In summary:

- The trees on the site were not covered by any protection (CA or TPO);
- Alltree Consultancy undertook a site visit and produced a report which outlined the trees to be removed were not of any value;
- The trees were chopped down lawfully in terms of town planning legislation;
- What remains, we understand, are chopped tress and some reaming stumps; and
- Our Client has development aspirations for the site and will be seeking the Local Authorities thoughts, through the submission of a pre-application, relative to a management plan which will seek to retain and protect the remaining trees while also enhancing the area through a submitted landscape scheme

Should the Local Authority want to discuss the context of this letter further, please contact myself on the details below.

*M.J. Birch*

M.J. Birch (May 29, 2019)

**Michael Birch**

BSc (Hons) MSc

Planner

[michael.birch@rapleys.com](mailto:michael.birch@rapleys.com)

Enclosures

Tree Preservation Order

Note from Alltree Consultancy dated 28/05/219

28<sup>th</sup> May 2019

Michael Birch  
RAPLEYS LLP  
33 Jermyn Street  
London SW1Y 6DN

Re: Charnwood, Ashby Road, Loughborough Leicestershire LE11 3QU

Dear Sirs,

Below is a summary of the events so far as Alltree Consultancy Ltd was involved with the site at Charnwood.

On 29<sup>th</sup> November 2018, Neil Hotston (Wyeth Projects Services Ltd) requested by email a fee proposal to look at the trees and survey the above site, giving information that would assist in any future management of the site.

30<sup>th</sup> November 2018, Alltree Consultancy Ltd was instructed to undertake a Tree Survey with tree retention categories as per BS5837:2012.

A site visit was undertaken on Tuesday 4<sup>th</sup> December 2018 to assess the trees on site and a report duly written.

In the process of compiling the report a visit to Charnwood Borough Council web site showed that there were no Tree Preservation Orders (TPO) and the area was not in a Conservation Area (CA).

The report also used Google Earth Pro historic views to highlight some of the features of the development of the site over the last few years.

The report did highlight that many of the trees were of poor condition, particularly the area to the west of the service station. The trees, mainly Cat C, some Cat U and one Ash, Cat B (as per BS5837:2012) were assessed in their current context.

It was noted in passing that full planning permission would mean that a Forestry licence would not be required should any felling works be carried out.

It is understood that a section of the site was cleared to stump height during the late winter / early spring, save for T6. A Woodland Tree Preservation Order has subsequently been served by the Charnwood Borough Council, which protects all the trees, including the remaining stumps and young trees.

T6, Ash has not been felled and is now a solitary tree not in the context that it was in when the survey was carried out. It was noted in the report that the tree was a 22m tall twin stem tree with less than ideal fork formation. It is possible that now the tree is exposed and subject to winds it has not been used to that it is vulnerable to wind which may affect the stability of the tree.

**Steve Launchbury**

Dip Hort (Kew), RFS Cert Arb, Tech Cert (Arbor A), TechArborA

office@alltreeconsultancy.co.uk

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A Woodland Tree Preservation Order has been made by Charnwood Borough Council on 8<sup>th</sup> May 2019, with the added words in the Specification of Trees section, "All trees in area W1, including seedlings, saplings and stumps".

The Woodland Order is in my view suitable for protecting the remaining woodland area, ie the block to the south of the service station, but is questionable as to its suitability for the area that has been felled (including T6) to the west of the service station.

In The Town and Country Planning (Tree Preservation)(England) Regulations 2012, there is no definition of 'Tree' given. Commonly, one would think a tree as is what is known commonly as a tree, not a stump.

Given that the area that has been cleared consists of essentially a line stumps (that were not protected before they were felled), it does not in my view constitute 'a woodland'. Though in the future, it may become one.

There are of course different ways of evaluating trees for their suitability for TPO, such as TEMPO (Tree Evaluation Method for Preservation Orders). If TEMPO were to be followed, the section that had already been cleared is unlikely *on its own* to have scored sufficiently to be suitable for a TPO.

It is understood that stumps in woodlands are protected after trees that were protected are felled, but one would ask, is it proper procedure to impose a TPO *after* trees have been felled?

I do not think that the complete site should be now subject to a Woodland Order, but have no problem with the area to the South of the service station.

Given that there was no TPO on the site, the trees were (as far as TPO goes) felled lawfully.

It is important to note that I believe MFG (Motor Fuel Group) have followed the correct procedure in terms of assessing the site for TPO and CA prior to felling trees.

Steve Launchbury.

**REPORT OF THE HEAD OF PLANNING AND REGENERATION****APPEALS AND REVIEW COMMITTEE 30 September 2019****Provisional Tree Preservation Order – Land at Ashby Road Loughborough LE113QU****1.0 Summary**

An emergency TPO has been made on an area of woodland on land on the corner of Snells Nook Lane and Ashby Road, adjacent to the BP filling station. The order was made following a report of tree felling made by a County Councillor. The order is a woodland order which covers the entire woodland area including both the remaining woodland and the part that has been felled. It is considered that the felled part of the woodland is capable of regeneration and indeed is currently regenerating.

It is considered that the order is appropriate and accords with Planning Practice Guidance because:

- The reason of expedience is self-evident since part of the woodland has already been felled,
- The area is considered to be a locally significant landscape feature that has substantial public amenity value and;
- The area as a whole, including the felled area has locally significant wildlife conservation value.

An objection to the order has been made stating that the felling was lawful, that the value of the woodland is insignificant and that the landowner intends to develop the site. The reasons for objection are contested. The objection has been supported by an Ecological Appraisal and an Arboricultural Assessment. These reports are not considered to be sufficiently objective or reliable to support the grounds for objection. The Forestry Commission (FC) has been contacted and is conducting its own investigation into unlicensed felling. The independent view of the FC investigating officer is that the decision to make a woodland TPO covering the entire site, including the felled area, was correct.

**2.0 Introduction****2.1 Background**

The Council was contacted on the afternoon of Good Friday (3<sup>rd</sup> May 2019) by County Councillor Max Hunt who reported a recent tree felling operation in woodland adjacent to the BP filling station on Ashby Road to the West of Loughborough. It was established the area in question was neither subject to an existing TPO nor in a conservation area.

During a site visit it was established that a substantial area of woodland to on the corner of Snell's Nook Lane and Ashby Road had been clear felled but the tree stumps remained in the ground. On the basis that the cleared area remained capable of regenerating as woodland both the cleared area and the remaining woodland to the south of the service station were made subject to an emergency TPO.

During the site visit the Senior Ecological Officer spoke to the manager on duty at the service station and a contracts manager for MFG (the company which owns the service station) by telephone. Both people said that they understood that the clearance work had been undertaken in connection with the development of a new "Starbucks" however the council has no record of either a planning application or an advice request.

## 2.2 *The Site*

The site is an area of broad leaved woodland to the south and west of the BP filling station on Ashby Road, forming a rough L shape with a spur running south down Snell's Nook Lane. The felled area includes all of the woodland to the west of the filling station with the exception of those trees at the margins of the site. The felled area covers approximately 1700m<sup>2</sup>.

The remaining woodland includes a canopy of mature and semi-mature trees plus an understorey and ground cover layer with species typical of other secondary woodland in the area. It seems to have established gradually over perhaps the last 50 years with some clearance taking place to facilitate the new filling station. Historic mapping shows that prior to the development of the woodland the site was divided into small field parcels by hedgerows with trees.

The site as a whole including the felled area is an important landscape feature which helps to screen the filling station and together with the Charnwood Hills to the south makes an important contribution to the skyline and views on the approach to Loughborough from J23 of the M1. It is a feature that marks the junction of Snells' Nook Lane and so is a semi-natural feature that contributes to legibility as well as attractiveness of the local landscape. For these reasons it is considered to have significant public amenity value and so satisfies the primary requirement for making a TPO. It is considered to have locally significant conservation value as a stepping stone between other local woodland and in having potential to support a range of wildlife including protected and notable species in its own right. This forms a secondary but nevertheless important consideration in the making of this TPO. There are clearly reasons of expedience for making this TPO since part of the woodland has already been felled.

## 3.0 **The Objection to the Order**

A letter of objection has been received from Rapleys on behalf of MFG. The letter includes a statement by Alltree Consultancy who undertook an arboricultural assessment prior to the felling. The substance of the objection is that:

- a) The felling operation was lawful
- b) "Many" of the trees were in poor condition
- c) The remaining stumps in the clear felled area do not warrant protection
- d) The unfelled area does merit protection
- e) MFG has development aspirations for the site

## 4.0 **Response to the Objection**

The substantive points made in the objection are considered below:

a) It is not clear that the felling operation was lawful. CBC contacted the Forestry Commission (FC) about this incident. Following their own site visit the FC provided the following statement: "The Forestry Commission have been involved in the investigation into unlicensed felling at the Snells Nook Lane site and are acting to ensure the legislation of the Forestry Act is upheld." It is understood that a stop notice was issued by the FC to prevent any further work or removal of timber pending further investigation. Conducting licensable felling without a felling licence is an offence under the (1967) Forestry Act. At the time of writing it is also understood that the FC are in the process of enforcing a restocking notice for the felled area.

b) The decision to fell the woodland appears to have been supported by an arboricultural assessment and an ecological appraisal. CBC has received copies of these. The arboricultural report is incomplete, equivocal or contradictory in places and recommends that only two trees should be felled. For the majority of trees that were assessed the recommendation is made either for “no action” or to “sever ivy”. The Ecological Appraisal is considered to contain significant errors omissions and or inconsistencies so is not accepted as reliable or objective account of the woodland. On this basis the objector’s claim that the trees do not merit protection is not considered to be supported by evidence.

c) The objector expresses the view that the felled area does not merit protection because all that remains are stumps, which would not normally be regarded as trees. CBC does not accept this interpretation since many of the cut trees are still living and are at present regrowing. Felling can represent good practice in forest management and so, given the extent of regeneration currently observable, it is considered that the felled area remains a woodland.

Planning Practice Guidance (Paragraph 011 Reference ID: 36-011-20140306) is clear that “protected trees can be of any size or species” and that woodland TPOs include “saplings of whatever size”. Paragraph 008 (Reference ID: 36-008-20140306) states that in making TPOs “The authority is advised to assess...*future* potential as an amenity” of trees, tree groups and woodlands. The current regeneration of the woodland clearly shows that this woodland has a future amenity value that is at least equal to its pre-felling value.

d) The objector proposes that the remaining woodland does merit protection. The recognition of the importance of this woodland is welcome. However, the distinction (made in the ecological assessment) between the felled and the remaining areas is considered arbitrary and not to be based either on a sound amenity or ecological assessment. Therefore the recognition of the importance of the remaining woodland is considered to undermine the appellants’ case that the felled area does not merit protection.

e) The objector’s development aspirations for the site are not considered relevant to an assessment of the value of the woodland. No planning application or advice request has been received for this site. Any development proposal that was submitted would need to be assessed against the national and local policy requirements to avoid biodiversity loss. The acknowledgement that this ground clearance was intended as preparation for development is welcome.

In the event that planning permission were granted this would supersede any TPO. Therefore the presence of a TPO is not an absolute constraint on development.

## **5.0 Proposed order**

It is recommended that the woodland TPO as presented in its provisional form is confirmed unamended. The woodland TPO is considered appropriate since it recognises the dynamic nature of woodlands. As such it protects all the trees within its boundary including saplings, whilst recognising the need for ongoing positive management. This in effect minimises the administrative burden on the owner for making repeated applications for minor works.

## Appendix 1: Site Photographs

**Top:** View North East across the site from Snells Nook Lane. **Bottom:** View south west from filling station forecourt



A comparison between contemporary images and recent historic images taken from Google Street View

Contemporary images



Recent historic images taken from Google maps showing significant trees (circled in red) that have been removed

