



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

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 Preston Room - Woodgate Chambers on Monday, 25th November 2019 at 5.00 pm for the following business.

Chief Executive

Southfields
Loughborough

15th November 2019

AGENDA

1. APOLOGIES
2. MINUTES OF THE PREVIOUS MEETING 4 - 5
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 (ADJ. MILLFIELD, 9 CHURCH STREET, ROTHLEY) TREE PRESERVATION ORDER 2019 6 - 20

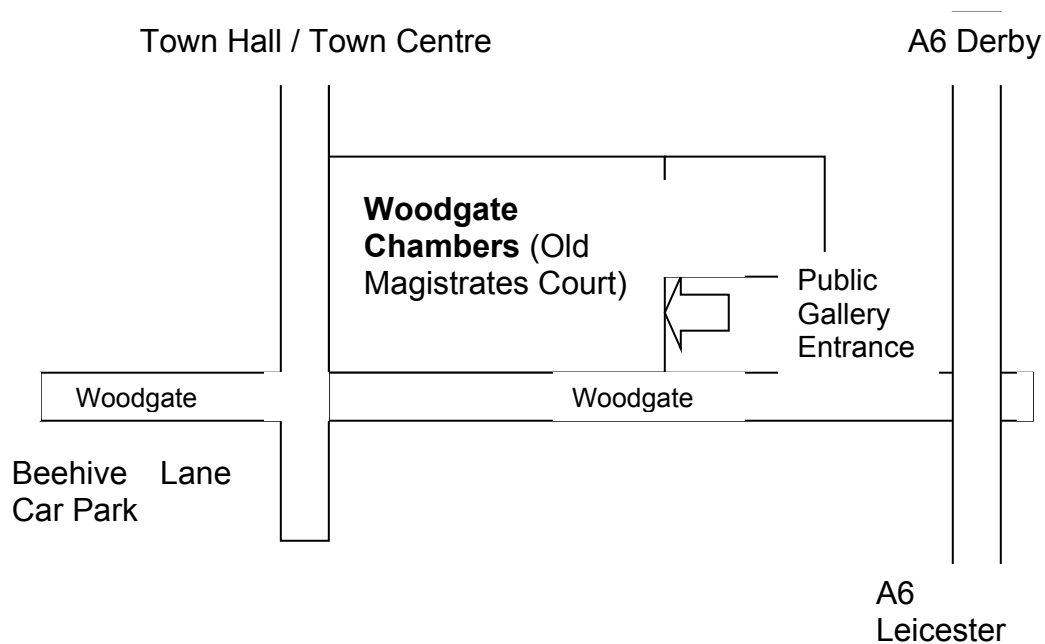
A report of the Head of Strategic Support is attached.

6. BOROUGH OF CHARNWOOD (THE GRANGE GARDENS, OFF FOWKE STREET, ROTHLEY) TREE PRESERVATION ORDER 2019 21 - 43

A report of the Head of Strategic Support is attached.

WHERE TO FIND WOODGATE CHAMBERS AND PUBLIC ACCESS

Woodgate Chambers
70 Woodgate
Loughborough
Leics
LE11 2TZ



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 28TH OCTOBER 2019

PRESENT: The Chair (Councillor Capleton)
The Vice Chair (Councillor Howe)
Councillors Charles and Needham

Dr R. Curtis (Objector)

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

APOLOGIES: Councillor K. Harris

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.

9. MINUTES OF THE PREVIOUS MEETING

The minutes of the meeting of the Committee held on 30th September 2019 were received and noted.

10. QUESTIONS UNDER OTHER COMMITTEE PROCEDURES 12.8

No questions had been submitted.

11. DISCLOSURES OF PECUNIARY AND PERSONAL INTERESTS

No disclosures of interest were made.

12. BOROUGH OF CHARNWOOD (WOOD CLOSE, WYVERNHOE DRIVE, QUORN LE12 8AP) 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.

The objection related to the inclusion of Woodland W1 in the Order. The objector confirmed that there was no objection to the protection of the groups of trees G1 and G2 in the Order.

RESOLVED that the Borough of Charnwood (Wood Close, Wyvernhoie Drive, Quorn LE12 8AP) Tree Preservation Order 2019 be confirmed, with modification to remove Woodland W1 from the Order.

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 trees as a Woodland W1 were reasonable and that, therefore, the Order should be confirmed with modification to remove Woodland W1 from the Order.

Notwithstanding the above, the Committee noted that there were a number of trees within Woodland W1 situated along the boundary with Buddon Lane that may warrant protection as a group of trees and wished officers to consider protection of those trees via a further Tree Preservation Order on that basis.

NOTES:

No reference may be made to these minutes at the Council meeting on 20th January 2020 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.

APPEALS AND REVIEWS COMMITTEE 25TH NOVEMBER 2019

Report of the Head of Strategic Support

ITEM 5 BOROUGH OF CHARNWOOD (ADJ. MILLFIELD, 9 CHURCH STREET, ROTHLEY) TREE PRESERVATION ORDER 2019

The above Order relates to a Lime tree (T1) in the grounds of St Mary the Virgin and St John the Baptist Church in Rothley (on its western perimeter). Notice P/19/0878/2 was received to “reduce overhanging branches by 3m”. The Council’s Head of Planning and Regeneration considered that this would be excessive and unwarranted pruning and, therefore, considered it appropriate to ensure that the tree, which makes a significant contribution to the visual amenity of the area (contributing to the character of the Conservation Area and being visible from various vantages in the village), is properly protected and retained in a satisfactory manner through the making of this Tree Preservation Order.

Therefore, an Order was made on 10th July 2019 to provisionally protect the tree.

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

An objection to the Order was received from Mr Ferguson (Churchwarden) on 29th July 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

Town and Country Planning Act 1990
The Borough of Charnwood (Adj. Millfield, 9 Church Street, Rothley)
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 (Adj. Millfield, 9 Church Street, Rothley) 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 10th day of July 2019

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

.....




2019-20-54

SPECIFICATION OF TREES

Trees specified individually (encircled in black on the map)

Reference on map	Description	Situation
T1	Lime	Situated in the grounds of St Marys Church Rothley on its western perimeter. OS grid reference: SK458579 312622.

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)

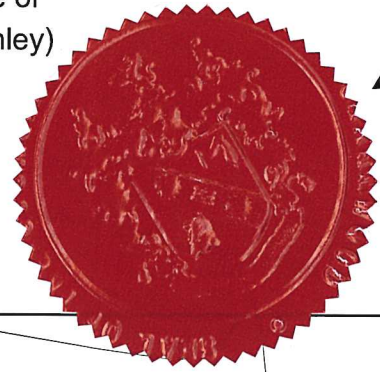
Reference on map	Description (including number of trees in the group)	Situation
	None	

Woodlands (within a continuous black line on the map)

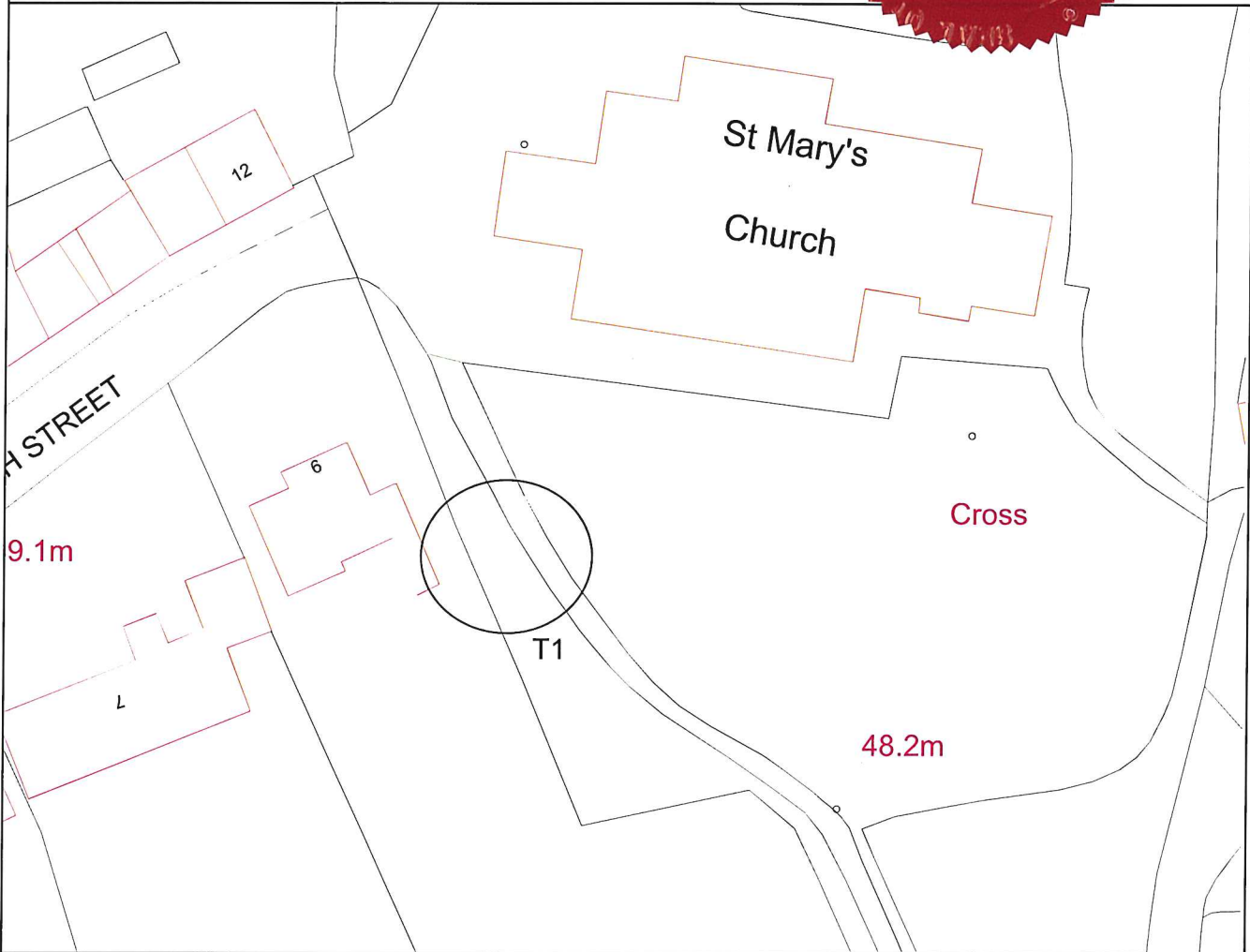
Reference on map	Description	Situation
	None	

2019-20 54

I certify this map shows the tree referred to in the first schedule of the Borough of Charnwood (Adj. Millfield 9 Church Street, Rothley) Tree Preservation Order 2019



Authorised signatory 



Borough of Charnwood
(Adj. Millfield 9 Church Street, Rothley)
Tree Preservation Order 2019

R Bennett Dip. TP. MRTPI
Head of Planning & Regeneration
Borough of Charnwood
Southfields
Loughborough
Leics. LE11 2TN
Date: 18 June 2019
Scale: 1:500
Prep: NOD

Licence No 100023558 Reproduced from the Ordnance Survey Map with permission of the Controller of Her Majesty's Stationary Office, Crown Copyright Reserved.

Strong Laura

From: Mike Ferguson
Sent: 29 July 2019 09:59
To: Strong Laura
Cc:
Subject: TPO created on tree in Rothley Church churchyard (Your Ref PT/34 - TPO 2019)
Importance: High

Dear Ms Strong

I am one of two churchwardens for Rothley Parish Church.

Towards the end of June this year I was informed by the owner of 9 Church Street, Rothley (Dr D Spencer) that there was a planned visit to the Rothley Parish Church to examine a tree overhanging the adjacent property. I telephoned Charnwood Borough Council (Mr James Lee) on 26th June and 1st July asking him to speak to him so that I could be present when he undertook the examination. On both occasions he was not available, and messages were left asking him to contact me. Emails were also sent to him. Despite this, no response happened. I object to the fact that no discussion occurred prior to the visit and that a preservation order has been placed on a tree within the churchyard without any involvement of the church.

The tree in relation to this TPO implies that the church is restricted in ensuring the safety of this tree. The trees within the church property are inspected regularly, but if this tree causes damage the liability now resides with the Borough Council.

Churchwarden
Mike Ferguson



REPORT OF THE HEAD OF PLANNING AND REGENERATION

APPEALS AND REVIEW COMMITTEE 25 November 2019

BOROUGH OF CHARNWOOD (Adj. Millfield, 9 Church Street, Rothley) TREE PRESERVATION ORDER 2019 - PROVISIONAL

1.0 Introduction

1.1 Background

The tree is a lime or linden (*Tilia* sp) in the grounds of St Mary the Virgin & St John the Baptist Church in Rothley, on its western perimeter. It contributes to the landscape character of the Conservation Area and in particular to the setting of a grade II listed church and can be seen from various vantages in the village such as Church Street, Anthony Street, Hallfields Road and PROW J55 as well as the public space off Anthony Street.

A Conservation Area Notice or S211 Notice P/19/0878/2 was received to “*reduce overhanging branches by 3m*”. On a site visit I found that the tree has been repeatedly excessively worked on that side. The nature and purpose of the tree protection is to preserve the true crown and root spread of the tree and to regulate any requests for works by ensuring they are necessary and proportionate; and would not have an adverse impact on the amenity of the tree. My evaluation is that this work as described would have an unacceptable impact on the form of the tree and its amenity value.

1.2 The Site

The site is the church grounds of St Mary the Virgin & St John the Baptist Church, a grade II listed building in Rothley Conservation Area.

1.3 Condition of the tree

The public amenity value of tree is high. The tree has previously been inappropriately pruned. The proposed work would have adversely impacted its amenity value and quite possibly its health and wellbeing. Arguably it requires lateral crown reduction on the eastern side to rebalance the crown, removal of epicormics growth up the main stem to ‘crown break’ and remedial pruning only to remove poor branch formation which resulted from previous siding back on the western flank.

2.0 The Objections to the Order

An objection to the Order was received by email on 29 July 2019 from Mr Ferguson, Church Warden for the Rothley Parish Church of St Mary and St John dated 29 July

Objection - Mr Ferguson Church Warden Rothley Parish Church St Mary and St John

1. The Objection is based on the fact there was no prior consultation with the Parish prior to the serving of the TPO.
2. The objection asserts that the TPO restricts the churches ability to ensure the safety of the tree.

3. It further claims that because there is a TPO, the liability for the tree should pass to the Council.

No other representations have been made in relation to the Order.

3.0 Response to the Objections

1. It is not a Regulation requirement to discuss or pre-warn land owners before the serving of a TPO. I consulted and walked the site with Mr Lee, Open Space Officer as he has involvement in the management of the trees.
2. The placing of TPOs on trees does not impede the rights or duties of land owners to manage their trees appropriately. What it does provide is scrutiny and oversight over proposed works. Anyone- land owners, neighbour or indeed, Mr Lee can submit applications for TPO tree works. The process requires that a reason is given for the works and that it be supported by evidence (see Appendix). Work needs to be appropriate, proportionate and necessary.
3. The Council does not prevent the proper management of the tree. The legal liability rests with the land owner and or land manager depending on the details of the management agreement.

4.0 Conclusion

Removing the Order by failing to confirm it at this appeal and review committee would mean the tree would be subject to disfiguring works to the detriment of the trees amenity value and wellbeing.

The committee is therefore recommended to confirm the Order without modification.

Contact Officer:

Nola O'Donnell MAgrSc Dip (hons) LA CMLI

Senior Landscape Officer

Tel: 01509 634766

Mob.: 07928525501

trees@charnwood.gov.uk

APPENDICES

APPENDIX A - PHOTOGRAPHS





APPENDIX B TPO TREE WORKS APPLICATION FORM EXTRACT

Section 7 Description of work

form031_english_en.pdf - Internet Explorer
2410Form031_english_en.pdf | intranet.charwood.local | Downloadable forms - Charmwo... | ecab.planningportal.co.uk

Save

7. Identification Of Tree(s) And Description Of Works

Please identify the tree(s) and provide a full and clear specification of the works you want to carry out. Continue on a separate sheet if necessary. You might find it useful to contact an arborist (tree surgeon) for help with defining appropriate work. Where trees are protected by a TPO, please number them as shown in the First Schedule to the TPO where this is available. Use the same numbers on your sketch plan (see guidance notes).

Please provide the following information below : tree species (and the number used on the sketch plan) and description of works. Where trees are protected by a TPO you must also provide reasons for the work and, where trees are being felled, please give your proposals for planting replacement trees (including quantity, species, position and size) or reasons for not wanting to replant.
Eg. Oak (T3) - fell because of excessive shading and low amenity value. Replant with 1 standard ash in the same place.

Version 2018.1

7. Identification Of Tree(s) And Description Of Works continued ...

8. Trees - Additional Information

3 of 4

Section 8 Additional Information

In this section applicants or agents need to explain if the reason for the works is safety related in subsection 8.1 The Council would expect a competent report indicating that the works are clearly necessary.

The screenshot shows a web browser window with the following content:

8. Trees - Additional Information
Additional information may be attached to electronic communications or provided separately in paper format.

For all trees
A sketch plan clearly showing the position of trees listed in Question 7 must be provided when applying for works to trees covered by a TPO. A sketch plan is also advised when notifying the LPA of works to trees in a conservation area (see guidance notes). It would also be helpful if you provided details of any advice given on site by an LPA officer.

For works to trees covered by a TPO
Please indicate whether the reasons for carrying out the proposed works include any of the following. If so, your application must be accompanied by the necessary evidence to support your proposals. (See guidance notes for further details)

1. **Condition of the tree(s)** - e.g. it is diseased or you have fears that it might break or fall: Yes No
If YES, you are required to provide written arboricultural advice or other diagnostic information from an appropriate expert.

2. **Alleged damage to property** - e.g. subsidence or damage to drains or drives. Yes No
If YES, you are required to provide for:
Subsidence
A report by an engineer or surveyor, to include a description of damage, vegetation, monitoring data, soil, roots and repair proposals. Also a report from an arboriculturist to support the tree work proposals.

Other structural damage (e.g. drains, walls and hard surfaces)
Written technical evidence from an appropriate expert, including description of damage and possible solutions.

Documents and plans (for any tree)
Are you providing separate information (e.g. an additional schedule of work for Question 7)? Yes No
If YES, please provide the reference numbers of plans, documents, professional reports, photographs etc in support of your application. If they are being provided separately from this form, please detail how they are being submitted.

9. Authority Employee / Member
It is an important principle of decision making that the process is open and transparent. For the purposes of this question "relating to"

3 of 4

Competent reports related to tree safety should be carried out by tree consultants such as are registered or chartered by the main UK registration bodies or by an international registration body such as the following:

The Arboricultural Association

<https://www.trees.org.uk/Find-a-professional>

The Institute of Chartered Foresters

<http://www.charteredforesters.org/about-us/hire-a-consultant/>

The International Society of Arboriculture

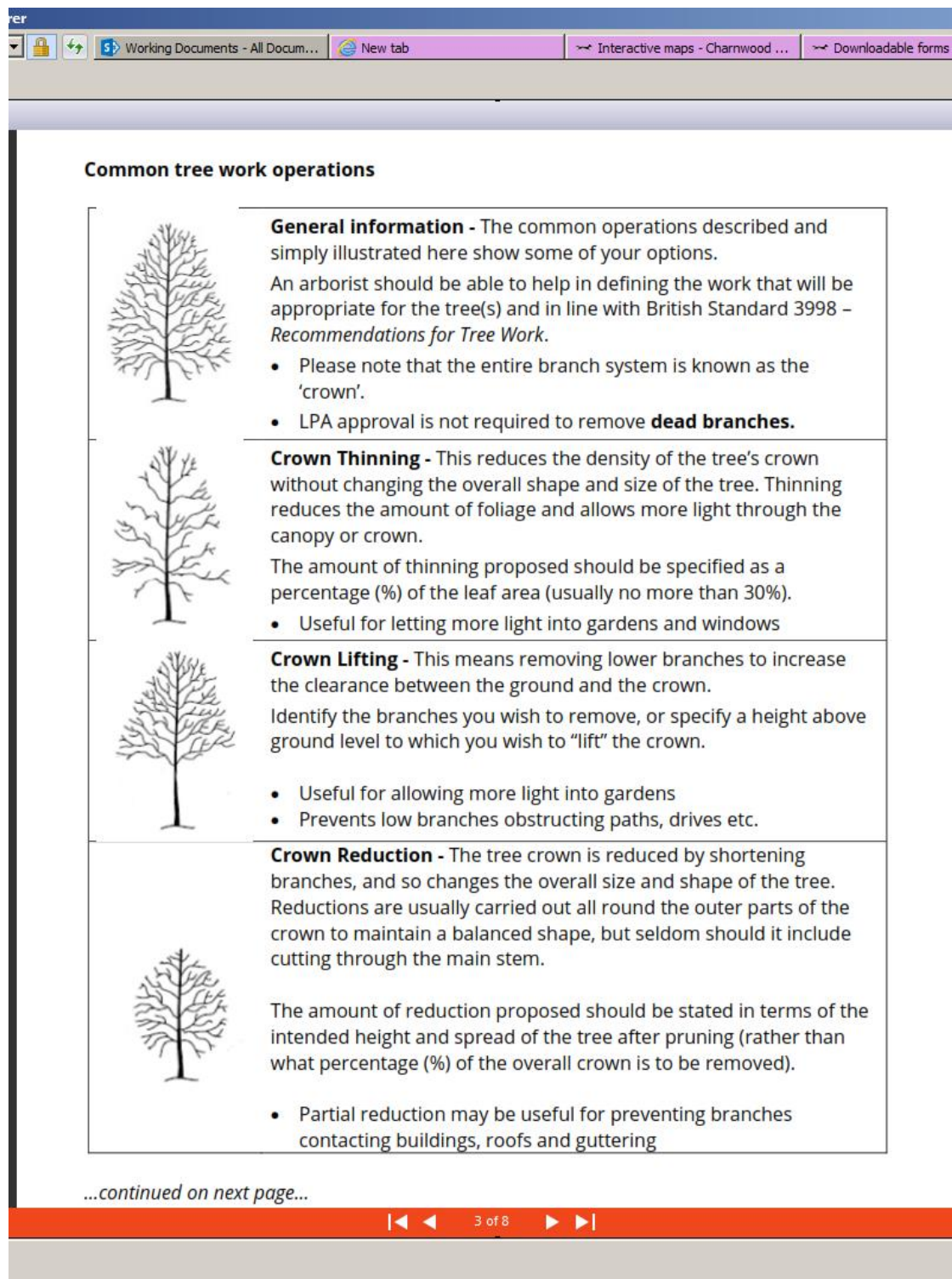
<https://www.isa-arbor.com/>

APPENDIX C – GUIDANCE

The Council provides guidance notes available from the Councils webpage for downloadable forms





<https://www.charnwood.gov.uk/pages/downloadableforms>

https://ecab.planningportal.co.uk/uploads/appPDF/Help031_english_en.pdf



The screenshot shows a web browser window with the following content:

Common tree work operations

	<p>General information - The common operations described and simply illustrated here show some of your options.</p> <p>An arborist should be able to help in defining the work that will be appropriate for the tree(s) and in line with British Standard 3998 – <i>Recommendations for Tree Work</i>.</p> <ul style="list-style-type: none">• Please note that the entire branch system is known as the 'crown'.• LPA approval is not required to remove dead branches.
	<p>Crown Thinning - This reduces the density of the tree's crown without changing the overall shape and size of the tree. Thinning reduces the amount of foliage and allows more light through the canopy or crown.</p> <p>The amount of thinning proposed should be specified as a percentage (%) of the leaf area (usually no more than 30%).</p> <ul style="list-style-type: none">• Useful for letting more light into gardens and windows
	<p>Crown Lifting - This means removing lower branches to increase the clearance between the ground and the crown.</p> <p>Identify the branches you wish to remove, or specify a height above ground level to which you wish to "lift" the crown.</p> <ul style="list-style-type: none">• Useful for allowing more light into gardens• Prevents low branches obstructing paths, drives etc.
	<p>Crown Reduction - The tree crown is reduced by shortening branches, and so changes the overall size and shape of the tree. Reductions are usually carried out all round the outer parts of the crown to maintain a balanced shape, but seldom should it include cutting through the main stem.</p> <p>The amount of reduction proposed should be stated in terms of the intended height and spread of the tree after pruning (rather than what percentage (%) of the overall crown is to be removed).</p> <ul style="list-style-type: none">• Partial reduction may be useful for preventing branches contacting buildings, roofs and guttering

...continued on next page...

3 of 8

The Council officers advise that all tree works be in accordance the British Standard for Tree Works BS 3998:2010

This cannot be made available for general copying/ distribution as The Councils Licence for its use does not allow for this but a paper copy will be brought to the meeting and passed around. I am happy to explain the main types of tree works operations that are generally consented and indeed what works will be refused.

APPEALS AND REVIEWS COMMITTEE 25TH NOVEMBER 2019

Report of the Head of Strategic Support

ITEM 6 BOROUGH OF CHARNWOOD (THE GRANGE GARDENS, OFF FOWKE STREET, ROTHLEY) TREE PRESERVATION ORDER 2019

The above Order relates to two areas of trees (A1 and A2) as illustrated on the plan attached to the Order. Permission is being sought to remove trees and reduce crowns within the private communal grounds of the site. The Council's Head of Planning and Regeneration considers that removal of the trees would yield a significant adverse impact on the landscape character and visual amenity of this part of the Conservation Area. Therefore, he considered it appropriate to ensure that the trees are properly protected and retained in a satisfactory manner through the making of this Tree Preservation Order.

Because of the potential for repeated Conservation Area Notices and decisions to place tree preservation orders on the same grounds, a single area TPO for the grounds was considered prudent.

Therefore, an Order was made on 28th June 2019 to provisionally protect the trees.

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

Objections to the Order were subsequently received from Mrs Simpkin of 31 Fowke Street, Rothley and Mr Sheppard of 39 Fowke Street, Rothley.

A copy of the objections 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

Town and Country Planning Act 1990
The Borough of Charnwood
(The Grange Gardens, off Fowke Street, Rothley)
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 (The Grange Gardens, off Fowke Street, Rothley) 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 28th day of June 2019

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





2019-41

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
Area A1	All trees of whatever species.	At the former Grange, off Fowke Street, Rothley. OS grid reference: SK 458670 31714
Area A2	All trees of whatever species.	At the former Grange, off Fowke Street, Rothley. OS grid reference: SK 458698 312812

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

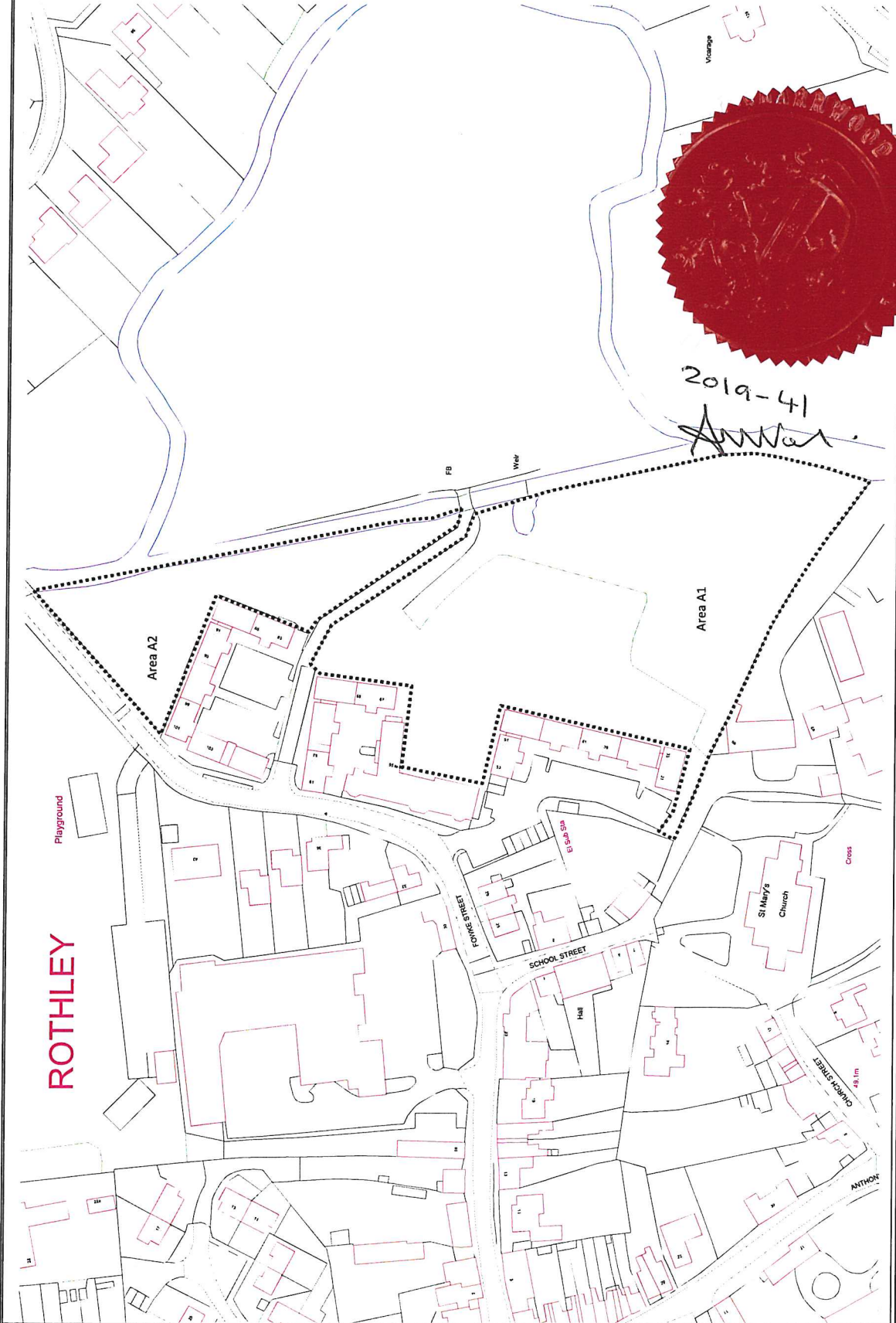
Reference on map	Description (including number of trees in the group)	Situation
	None	

Woodlands (within a continuous black line on the map)

Reference on map	Description	Situation
	None	

Borough of Charnwood (The Grange Gardens, off Fowke Street, Rothley) Tree Preservation Order 2019

I certify this map shows the entire area referred to in the first schedule of the Borough of Charnwood (The Grange Gardens ,off Fowke Street ,Rothley)Tree Preservation Order 2019



R Bennett Dip. TP. MRTPI
Head of Planning & Regeneration
Borough of Charnwood
Southfields
Loughborough
Leics. LE11 2TN
Date: August 2019
Scale: 1:1250
Prep: NOD

26th August 2019

Laura Strong
Democratic Services Officer
Charnwood Borough Council
Southfield Road
Loughborough
LE 11 2TX

Dear Mrs Strong

Tree Preservation Order Proceedings
The Grange Gardens, Fowke Street Rothley

Thank you for your detailed letter concerning the above. I appreciate you informing the residents of the Grange of what has happened, and the subsequent consequences of having a TPO made on the whole Grange Gardens estate.

The Grange historically had formal gardens which were maintained with a diverse mixture of lawns, shrubbery, ponds, flower and vegetable beds. There is much evidence of the former glory of these grounds still in existence but this is sadly disappearing with the passage of time due to the lack of maintenance.

The Grange site was redeveloped some 11 years ago for residential use and the gardens areas to the rear of the properties have been retained within the site boundaries and are currently the responsibility of the Management Company Kingsdale to maintain.

The residential properties Nos. 31 and 33 adjacent to the Church boundary wall have a significant number of young and small saplings in the small strip of land between the buildings and the boundary wall included in Area A1 on the plan. This includes 3 young pine trees where the canopies have now grown to within touching distance of the buildings and one mostly dead Holly Tree.

I object to the TPO on the grounds that given the Grange Gardens are already within a Conservation Area, the existing rules for tree management on this site should be maintained. There is no evidence to my knowledge that any tree work is or has been undertaken outside of Conservation Area Notices to suggest that the imposition of the TPO is necessary. The manner of the 'blanket' TPO in that it simply defines the whole area by two blocks A1 and A2, is not appropriate to the grounds in their entirety. The imposition of the Area TPO without reference to specific trees of importance is not a workable solution for these gardens. There will always be a requirement for trees to be managed on this site due to tree canopy size, or roots in proximity to buildings, dead branches or dead trees and storm damaged trees etc. The residential properties Nos. 31 and 33 which are immediately adjacent to part of the Area A1 TPO should be permitted to have the same right to light as when the residences were first built. This is best achieved by regular maintenance under Conservation Area Notices, as opposed to the TPO which includes all trees regardless of age and size.

Yours sincerely,

Jane Simpkin

cc. Vanda Strutt at Kingsdale Ltd.

23 August 2019

Laura Strong
Democratic Services Officer
Charnwood Borough Council
Southfield Road
Loughborough
LE11 2TX

Dear Mrs Strong

Tree Preservation Order Proceedings
The Grange Gardens, Fowke Street, Rothley

I object to the imposition of a blanket TPO on all the garden areas around the group of apartments fashioned out of the site of The Grange. It is a sledgehammer style of action designed to crack the proverbial small nut. The Grange and all its environs are part of an existing Conservation Area the terms of which require express Council permission to undertake any work on trees. Indeed, a very reasonable proposal for work under this measure was put up by the management company and its tree surgeon here, earlier in the year, but which for some reason sparked this TPO initiative.

A blanket TPO means that every new but unintended emergence of rogue trees such as ash and sycamore are caught in this web of protection. The birds and the wind are always busy sowing the seeds of these interlopers. No doubt under a TPO regime it will be harder to justify removal of such unwanted specimens.

The apartments at the southern end of this development (Nos 31-51) are quite close to the large tree stock which have an effect on the light we receive and the deposits that clog up the gutters. As was pointed out in the most recent application for permission, one adjacent holly tree is dead, and another sycamore growing out of a garden pond wall has crashed over. It should be a matter of clear and simple application under the Conservation Area rules for permission to be granted for the necessary work.

Before moving here in 2017 I lived for 30 years at No. 40 Fowke Street across the road, sharing my plot with four very mature forest trees at the back and two at the front. During that long period, and under the Conservation Area rules I made a steady number of successful applications for work on the trees, including removal of two with disease and liveability issues. Those rules in my opinion are perfectly good enough.

With all this TPO procedure going on, a whole season of tree work is going undone. I gaze out of my apartment at the Goat Willow with its numerous dead but still attached high branches which were caught up in a big storm.

Yours faithfully

Terry Sheppard

REPORT OF THE HEAD OF PLANNING AND REGENERATION

APPEALS AND REVIEW COMMITTEE 25 November 2019

BOROUGH OF CHARNWOOD (The Grange Gardens off Fowke Street Rothley) TREE PRESERVATION ORDER 2019 - PROVISIONAL

1.0 Introduction

1.1 Background

A S211 Notice, also known as a Conservation Area Notice for tree works P/19/0014/2 for 'land off Homefield Lane, Rothley' was received seeking to fell two pines and crown reduce three sycamores as part of works to trees within the private communal grounds. Removal of the trees would yield a significant adverse impact on the landscape character of this part of the Conservation Area. No reason was given for the proposed felling or crown reductions. The trees 2 x Scots Pines are situated on the southern boundary to the private grounds of the apartments off Fowke Street, Rothley, formerly known as the Grange. They are visually prominent from vantage on Fowke Street and from the publically accessible car parking to the apartments. The Sycamores are visible from Homefield Lane. Because of the potential for repeated CANs and decisions to place TPOs on the same grounds, I consider it prudent to create a TPO for the whole grounds.

1.2 The Site

The site is an historic grounds of the Grange a significant though unlisted building mentioned in the Conservation Area Appraisal 2008. Under the section on parks and gardens it states "*The garden of The Grange contains some fine specimen trees but these are difficult to assess while the redevelopment is taking place.*" The Grange was originally a private country house which was from 1894 until 1974 the office headquarters of the Barrow Rural District Council until its abolition. The successor authority Charnwood Borough leased it to Severn Trent and Leicestershire Social Services until its sale and redevelopment to current residential use. The grounds were developed as gardens by the Abbott Robinsons a locally significant family who acquired the Grange in 1894 as their country seat.

The local history is available from the Rothley Parish website
<https://www.rothleyparishcouncil.org.uk/the-grange-fowke-street.html>

1.3 Condition of the trees

The trees are part of the collection of the gardens. The pines are mature and the sycamores early mature. They are fair to good in condition.

2.0 The Objections to the Order

Two objections to the Order were received by email.

Objection - Mrs J Simpkin, a resident of an apartment at the Grange

The objection asserts that:

1. because the gardens are within the Conservation Area there is adequate protection for the assorted trees.
2. because there has been no breach of the Regulations there is no justification to create a TPO.
3. It further claims that creating area TPOs- Area 1 and Area 2, is inappropriate and claims that such TPOs are 'unworkable' because it does not specify individual trees.
4. There will always be a "*requirement for trees to be managed on this site*".
5. There should be an equal '*right to light*'.
6. Management of the tree is best achieved by regular maintenance under conservation Area Notices.

Objection – Terry Sheppard, a resident of an apartment at the Grange

The objection

1. implies that by use of the idiom "a sledgehammer to crack a nut", the Order is onerous and excessive.
2. It assumes that the Conservation Area requires "express permission for works".
3. Its assumes that every new self-set seedling is covered by the order.
4. It references the effect of trees on light
5. It references the need to clean gutters
6. It assumes that collapsed trees are covered.
7. It lists a history of tree loss for one area on the gardens through successive Conservation Area Notices. Indicating there is pressure to constrain trees.
8. It assumes that dead and dangerous trees or branches cannot be removed.

No other representations have been made in relation to the Order.

3.0 Response to the Objections

Response to Mrs Simpkin Objection

1. The Conservation Area affords a first line of defence for tree by placing an obligation on the land owner to notify (S211) the Council of any work they intend to carry out on a tree which has a diameter of 75mm or more measured at 1.5m height. The objection wrongly assumes this is a mechanism which can steer or control works. The decision options are only either 'to create a TPO' or 'to not create a TPO'. If a TPO is not created (as in the case of not meriting a TPO or by default) the works are permitted even if works are not recommended or not beneficial to the tree. I judged that not all the described works were appropriate and my only option to stop that works was to create the TPO. A TPO provides a highest level of protection because the decision options are to either 'refuse', 'consent' or 'conditionally consent, being as it is a planning application. It also requires a reason be stated for the described works and that this be properly supported by evidence. (Appendix The TPO is the only mechanism to allow for works to be controlled.
2. Breach of Regulations is not the only justification for the creation of a TPO. A proposal for works judged inappropriate is another potential trigger.

3. Area TPOs are one of a range of options under the regulations (see appendix). It is territorially defined and is useful where there is a large number of trees and no available tree survey identifying all the trees. Land owners who manage large grounds which may include a large collection of specimens or woodlands are recommended to survey and record all their trees. In the case of the Grange gardens the landowner could submit their management plan for the site indicating the range of works to be undertaken over a period of time such as a typical 2 year consent period. This is of particular benefit for the landowners when planning and scheduling works and is therefore a more efficient way for both landowner and planning authority to deal with tree management issues which may arise.
4. The placing of TPOs on trees does not impede the rights or duties of land owners to manage their trees appropriately. What it does provide is scrutiny and oversight over proposed works. Anyone- land owners, residents of the Grange apartments or indeed, neighbours can submit applications for TPO tree works. The process requires that a reason is given for the works and that it be supported by evidence (see Appendix). Work needs to be appropriate, proportionate and necessary. It imposes a level of scrutiny on the management by requiring landowners or other interested parties to formally apply for permission giving reasons supported by evidence. The vast majority of applications are conditionally consented.
5. A reasonable approach is taken to evaluating whether or not it is appropriate to work trees to improve garden and internal house amenity to improve light levels.
6. The management of trees is better served through the formal serving of a TPO as it gives the planning authority a greater level of scrutiny and control.

Response to Terry Sheppard Objection

1. implies that by use of the idiom “*a sledgehammer to crack a nut*”, the Order is onerous and excessive. The placing of TPOs on trees is not onerous or excessive. It does not impede the rights or duties of land owners to manage their trees appropriately. TPOs provide scrutiny and oversight over proposed works which is not possible through Conservation Area Notices (Section 211 of the Town and Country Planning Act 1990). Anyone- land owners, residents of the Grange apartments or indeed, neighbours can submit applications for TPO tree works. The process requires that a reason is given for the works and that it be supported by evidence (see Appendices B and D). Work needs to be appropriate, proportionate and necessary. The added benefit is it requires the planning authority to provide if requested, advice prior to the submission of the application.
2. However the Conservation Area designation only requires landowners submit a Notice informing the planning authority of works they intend to carry out, be it pruning or felling, to identify the tree and its location. It is not a refined means of controlling proposed works as mentioned in the response to the above objection.
3. The TPO covers all existing trees. It does not cover any new seedling which may grow. In practical terms it covers trees which are identified as such and in practise this would mean any recorded in a landowner’s tree survey and /or management plan.
4. The Councils tree policy states “*It is usually very difficult to prune a tree in order to give a lasting improvement in light levels to a property. Often the extent of pruning*

required to alleviate light obstruction can be damaging to the tree or destroy its amenity value, and thick re-growth following pruning can make shading problems worse. The Council will therefore resist this course of action except in exceptional circumstances.” Pruning to accommodate light is not prevented where it is the tree which demonstrably is causing a significant adverse impact of domestic amenity. Factors which need to be taken into account are the design and orientation of the dwelling and the natural conditions of the site, the shadow pattern for the external space as may be caused by landform, trees, buildings or other large massing. Different dwellings may naturally have different light levels. Reasonable and proportionate pruning is usually consented so long as it does not adversely impact the amenity value of a tree.

5. The cleaning of gutters is a standard management practise. The TPO does not prevent the cleaning of gutters. The Councils own tree policy does not consider the dropping of leaves/ needles, fruit or twigs etc as a justifiable reason to carry out works to a tree.
6. Trees which are dead or dangerous are exemption the regulations (See Appendix D). All that a landowners needs to do is send in a 5 day notice to inform the planning authority that they are removing a dead or dangerous tree or branch. The planning authority will either acknowledge or challenge by requesting evidence. A site visit may be undertaken but the issue is usually resolved within the 5 working day period. (See APPENDIX E)
7. The objection references that for a garden area within the gardens there has been ongoing CANs to reduce trees. The TPO will not prevent the submission of applications for tree works and works which are deemed appropriate.
8. It assumes that dead and dangerous trees or branches cannot be removed. As stated in No6 dead and dangerous trees or branches can be removed. (see Appendix D and E)

4.0 Conclusion

Removing the Order by failing to confirm it at this appeal and review committee would mean the tree would be subject to disfiguring works to the detriment of the trees amenity value and wellbeing.

The committee is therefore recommended to confirm the Order without modification.

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APPENDICES

APPENDIX A - PHOTOGRAPHS



Pines in setting





holly



Sycamore in their setting

APPENDIX B TPO TREE WORKS APPLICATION FORM EXTRACT

Section 7 Description of work

form031_ england_en.pdf - Internet Explorer
2410Form031_england_en.pdf | Intranet.charnwood.local | Downloadable forms - Charnwo... | ecab.planningportal.co.uk

Save

7. Identification Of Tree(s) And Description Of Works

Please identify the tree(s) and provide a full and clear specification of the works you want to carry out. Continue on a separate sheet if necessary. You might find it useful to contact an arborist (tree surgeon) for help with defining appropriate work. Where trees are protected by a TPO, please number them as shown in the First Schedule to the TPO where this is available. Use the same numbers on your sketch plan (see guidance notes).

Please provide the following information below : tree species (and the number used on the sketch plan) and description of works. Where trees are protected by a TPO you must also provide reasons for the work and, where trees are being felled, please give your proposals for planting replacement trees (including quantity, species, position and size) or reasons for not wanting to replant.
Eg. Oak (T3) - fell because of excessive shading and low amenity value. Replant with 1 standard ash in the same place.

Version 2018.1

7. Identification Of Tree(s) And Description Of Works continued ...

8. Trees - Additional Information

3 of 4

Section 8 Additional Information

In this section applicants or agents need to explain if the reason for the works is safety related in subsection 8.1 The Council would expect a competent report indicating that the works are clearly necessary.

The screenshot shows a web browser window with the following content:

8. Trees - Additional Information
Additional information may be attached to electronic communications or provided separately in paper format.

For all trees
A sketch plan clearly showing the position of trees listed in Question 7 must be provided when applying for works to trees covered by a TPO. A sketch plan is also advised when notifying the LPA of works to trees in a conservation area (see guidance notes). It would also be helpful if you provided details of any advice given on site by an LPA officer.

For works to trees covered by a TPO
Please indicate whether the reasons for carrying out the proposed works include any of the following. If so, your application must be accompanied by the necessary evidence to support your proposals. (See guidance notes for further details)

1. **Condition of the tree(s)** - e.g. it is diseased or you have fears that it might break or fall: Yes No
If YES, you are required to provide written arboricultural advice or other diagnostic information from an appropriate expert.

2. **Alleged damage to property** - e.g. subsidence or damage to drains or drives. Yes No
If YES, you are required to provide for:
Subsidence
A report by an engineer or surveyor, to include a description of damage, vegetation, monitoring data, soil, roots and repair proposals. Also a report from an arboriculturist to support the tree work proposals.

Other structural damage (e.g. drains, walls and hard surfaces)
Written technical evidence from an appropriate expert, including description of damage and possible solutions.

Documents and plans (for any tree)
Are you providing separate information (e.g. an additional schedule of work for Question 7)? Yes No
If YES, please provide the reference numbers of plans, documents, professional reports, photographs etc in support of your application. If they are being provided separately from this form, please detail how they are being submitted.

9. Authority Employee / Member
It is an important principle of decision making that the process is open and transparent. For the purposes of this question "relating to"

At the bottom of the form, there is a navigation bar with a red background and the text "3 of 4" in the center.

Competent reports related to tree safety should be carried out by tree consultants such as are registered or chartered by the main UK registration bodies or by an international registration body such as the following:

The Arboricultural Association

<https://www.trees.org.uk/Find-a-professional>

The Institute of Chartered Foresters

<http://www.charteredforesters.org/about-us/hire-a-consultant/>

The International Society of Arboriculture

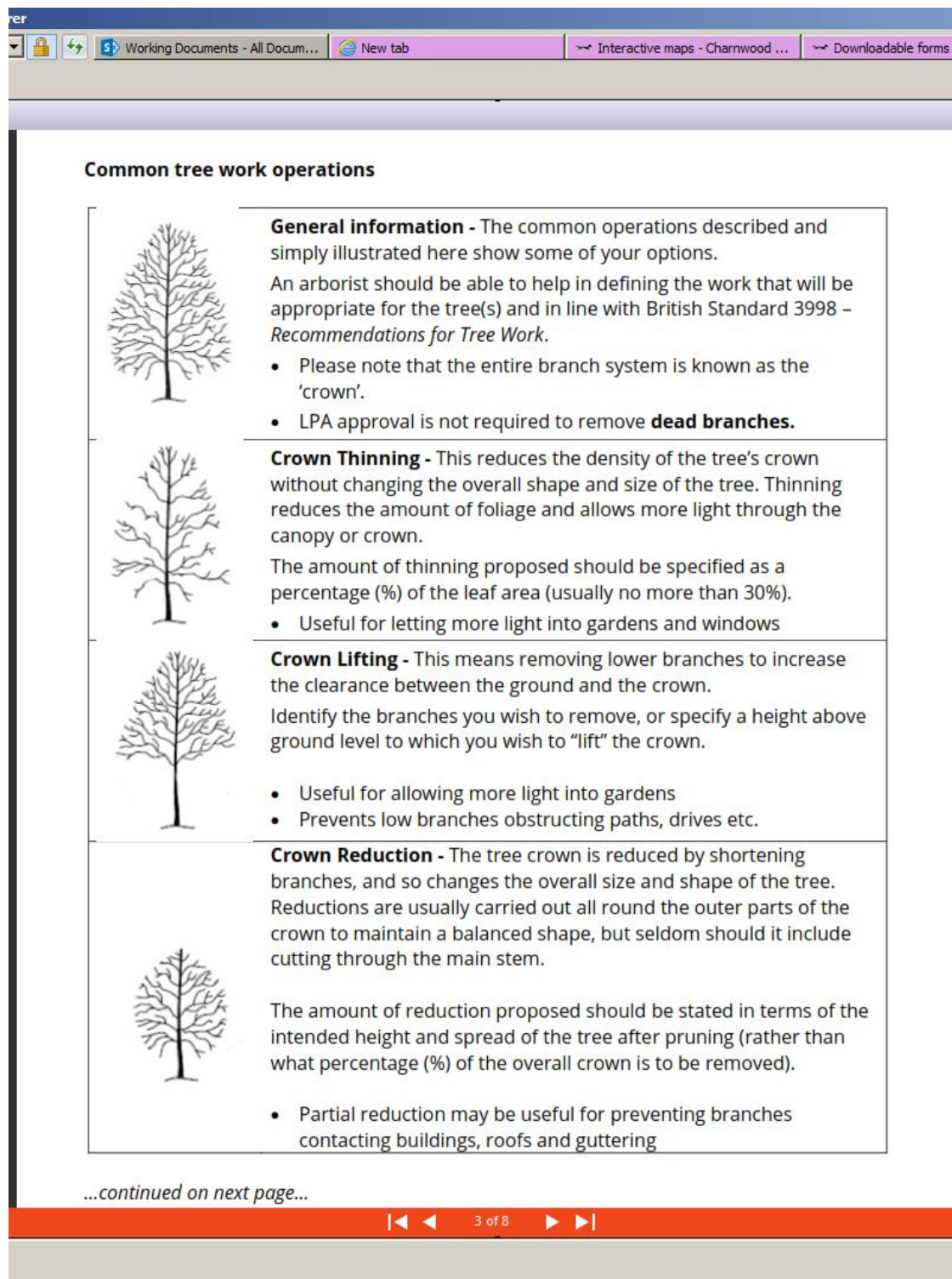
<https://www.isa-arbor.com/>

APPENDIX C – GUIDANCE

The Council provides guidance notes available from the Councils webpage for downloadable forms





<https://www.charnwood.gov.uk/pages/downloadableforms>

https://ecab.planningportal.co.uk/uploads/appPDF/Help031_english_en.pdf



The screenshot shows a PDF document with the following content:

Common tree work operations

	<p>General information - The common operations described and simply illustrated here show some of your options.</p> <p>An arborist should be able to help in defining the work that will be appropriate for the tree(s) and in line with British Standard 3998 – <i>Recommendations for Tree Work</i>.</p> <ul style="list-style-type: none">• Please note that the entire branch system is known as the 'crown'.• LPA approval is not required to remove dead branches.
	<p>Crown Thinning - This reduces the density of the tree's crown without changing the overall shape and size of the tree. Thinning reduces the amount of foliage and allows more light through the canopy or crown.</p> <p>The amount of thinning proposed should be specified as a percentage (%) of the leaf area (usually no more than 30%).</p> <ul style="list-style-type: none">• Useful for letting more light into gardens and windows
	<p>Crown Lifting - This means removing lower branches to increase the clearance between the ground and the crown.</p> <p>Identify the branches you wish to remove, or specify a height above ground level to which you wish to "lift" the crown.</p> <ul style="list-style-type: none">• Useful for allowing more light into gardens• Prevents low branches obstructing paths, drives etc.
	<p>Crown Reduction - The tree crown is reduced by shortening branches, and so changes the overall size and shape of the tree. Reductions are usually carried out all round the outer parts of the crown to maintain a balanced shape, but seldom should it include cutting through the main stem.</p> <p>The amount of reduction proposed should be stated in terms of the intended height and spread of the tree after pruning (rather than what percentage (%) of the overall crown is to be removed).</p> <ul style="list-style-type: none">• Partial reduction may be useful for preventing branches contacting buildings, roofs and guttering

...continued on next page...

3 of 8

The Council officers advise that all tree works be in accordance the British Standard for Tree Works BS 3998:2010

This cannot be made available for general copying/ distribution as The Councils Licence for its use does not allow for this, but a paper copy will be brought to the meeting and passed around. I am happy to explain the main types of tree works operations that are generally consented and indeed what works will be refused.

APPENDIX D the Legislation and guidance

<http://www.legislation.gov.uk/ukxi/2012/605/contents/made>

<https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas>

DANGEROUS TREE NOTIFICATION – Regulation 14 Exemption Works

You mention the word 'dangerous'. If your use is technically correct the law allows for works to make a tree safe. Such works to remedy a hazard must meet the legal definition description of presenting 'an immediate risk of serious harm'. Any competent tree surgeon will know this.

There are three priority levels for dangerous tree notification.

1. **immediate hazard requiring immediate emergency** action – for this a tree surgeon can act immediately without waiting for a reply from the council but must be prepared to have his decision challenged and must provide evidence in writing as a Notice as soon as practicable that his action was necessary and proportionate.
2. **Hazard requiring urgent action in days**- for this the above mentioned evidence should be submitted in writing. This is known as 5 day notification. If there is no response in 5 days, the Notifier can proceed but as above must have submitted the required evidence as part of the Notice. We endeavour to return an acknowledgement well within the 5 working days and may visit the site or require further information.
3. **Identified hazard presenting potential future danger** but not an immediate risk of serious harm- this must be dealt with through the application process.

Any emergency works needed can therefore be carried out providing formal notice is made to the Council and evidence presented, as soon as practicable. This ideally can be by email but could be by Royal Mail. The phrase 'as soon as practicable' can be interpreted that a tree surgeon could as soon as he reaches the site and his assessment of 'immediate risk of serious harm', can get to work immediately once he takes the required photographs and sends the evidence in after he has remedied the hazard and I acknowledge and recognise that such situations may occur. The law is quite strict and only the hazardous part of the tree may be removed. In some situations the tree itself is the hazard. If further works takes place the tree surgeon could be liable. All works must be in accordance with the BS3998. **He must send in the Notice as soon as he can**. If a tree surgeon is at or up a tree he judges to be a level 1 priority and manages to get me on my mobile great, I can probably give acknowledgement but the notice must be in writing and must still be sent in.

What is the exception for work on dangerous trees and branches?

Where a tree presents an immediate risk of serious harm and work is urgently needed to remove that risk, tree owners or their agents must give written notice to the authority as soon as practicable after that work becomes necessary. Work should only be carried out to the extent that it is necessary to remove the risk.

In deciding whether work to a tree or branch is urgently necessary because it presents an immediate risk of serious harm, the Secretary of State's view is that there must be a present serious safety risk. This need not be limited to that brought about by disease or damage to the tree. It is sufficient to find that, by virtue of the state of a tree, its size, its position and such

effect as any of those factors have, the tree presents an immediate risk of serious harm that must be dealt with urgently. One consideration would be to look at what is likely to happen, such as injury to a passing pedestrian.

If the danger is not immediate the tree does not come within the meaning of the exception.

Where a tree is not covered by the woodland classification and is cut down because there is an urgent necessity to remove an immediate risk of serious harm, the landowner has a [duty to plant a replacement tree of an appropriate size and species](#).

Paragraph: 080 Reference ID: 36-080-20140306

Revision date: 06 03 2014

Charnwood does not provide arboricultural services to private landowners. While I could make a visit to look at the tree I am not an arboriculturist and cannot provide specialist arboricultural advice or risk assessment. My role is amenity value assessment. For emergency notifications what I require is three photographs:

1. **Tree in its landscape setting** – this should show it at a distance and the frame should include surrounding buildings,
2. **the tree showing its full extend of height and crown** without cropping.
- 3 **a close –up of the issue/ hazard** be it a split in the stem or fractured branch or evidence of root heave. The opinion of a competent experience tree surgeon can be helpful.

I am not always in the office. The direct landline is mainly for live calls. My message on the landline explicitly advises emailing trees@charnwood.gov.uk Tree surgeons may also get me on the mobile but if they do not, then they need to send a text indicating the level of urgency.

References:

The Town and Country Planning (Tree Preservation)(England) Regulations 2012

UK Statutory Instruments 2012 No. 605 PART 3 Regulation 14

<http://www.legislation.gov.uk/ukxi/2012/605/regulation/14/made>

TPO guidance

<https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas>

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Conservation & Landscape Team Planning Service
Charnwood Borough Council

Ends/ advice note- dangerous trees /branches revised - 12 Sept 2019

APPENDIX - COUNCILS TREE POLICY

https://www.charnwood.gov.uk/pages/tree_policy