



APPEALS AND REVIEWS COMMITTEE

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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, 27th January 2020 at 5.00 pm for the following business.

Chief Executive

Southfields
Loughborough

17th January 2020

AGENDA

1. APOLOGIES
2. MINUTES OF THE PREVIOUS MEETING 3 - 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

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 25TH NOVEMBER 2019

PRESENT: The Vice-chair (Councillor Howe)
Councillors Charles, Gerrard, K. Harris and
Needham

Mr Sheppard, Mrs Simpkin (objectors, item 6)

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

APOLOGIES: Councillor Capleton

The Vice-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.

13. MINUTES OF THE PREVIOUS MEETING

The minutes of the meeting of the Committee held on 28th October 2019 were received and noted.

14. QUESTIONS UNDER OTHER COMMITTEE PROCEDURES 12.8

No questions had been submitted.

15. DISCLOSURES OF PECUNIARY AND PERSONAL INTERESTS

No disclosures of interest were made.

16. AGENDA VARIANCE

RESOLVED that item 6 on the agenda be considered before item 5.

Reason

The objector to the Tree Preservation Order to be considered at item 5 was not present at this point in the meeting. Although it was not known whether he would be attending the meeting, delaying consideration of the item would allow for any late arrival.

17. BOROUGH OF CHARNWOOD (THE GRANGE GARDENS, OFF FOWKE STREET, ROTHLEY) 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 objections received to the Order and the comments of the Head of Planning and Regeneration on the issues raised by the objections (item 6 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 objectors 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 (The Grange Gardens, Off Fowke Street, Rothley) Tree Preservation Order 2019 be confirmed.

Reason

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

Notwithstanding the above, the Committee noted that the protection afforded by the Order did not prevent a management plan for the trees on the site being submitted to the Council, with a view to gaining permission for appropriate management of the trees via an agreed programme of works.

18. BOROUGH OF CHARNWOOD (ADJ. MILLFIELD, 9 CHURCH STREET, ROTHLEY)
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

The Head of Planning and Regeneration's representatives attended the meeting to put forward their cases and answer the Committee's questions. The objector did not attend.

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 (Adj. Millfield, 9 Church Street, Rothley) 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 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 27TH JANUARY 2020

Report of the Head of Strategic Support

ITEM 5 BOROUGH OF CHARNWOOD (161 SWITHLAND LANE, ROTHLEY) TREE PRESERVATION ORDER 2019

The above Order relates to a Redwood tree (T1) located in the rear garden of 161 Swithland Lane, Rothley. A Conservation Area Notice was received seeking to fell the tree, citing root heave of the tennis court surface at 163 Swithland Lane. However, the Council's Head of Planning and Regeneration considers that the surface is old and degraded with cracks well beyond the root zone of influence and in need of replacement, such that resurfacing could be designed to minimise risk of localised disturbance heave and without loss of the tree. It is considered that removal of the tree, which is an early mature specimen, in good condition, relatively unusual and an interesting feature meriting retention, would yield a significant adverse impact on the landscape character of this part of the Conservation Area, such that it is appropriate to ensure that the tree is properly protected and retained in a satisfactory manner through the making of this Tree Preservation Order.

Therefore, an Order was made on 30th August 2019 to provisionally protect the tree.

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

An objection to the Order was received on 26th September 2019 from the agent acting on behalf of the occupiers of 163 Swithland Lane, Rothley.

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 (161 Swithland Lane, 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 (161 Swithland Lane, 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 30th day of August 2019

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

.....




2019-20-71

SPECIFICATION OF TREES

Trees specified individually (encircled in black on the map)

Reference on map	Description	Situation
T1	Redwood	Situated in the rear garden along the eastern boundary OS grid reference: SK457094 313728

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)

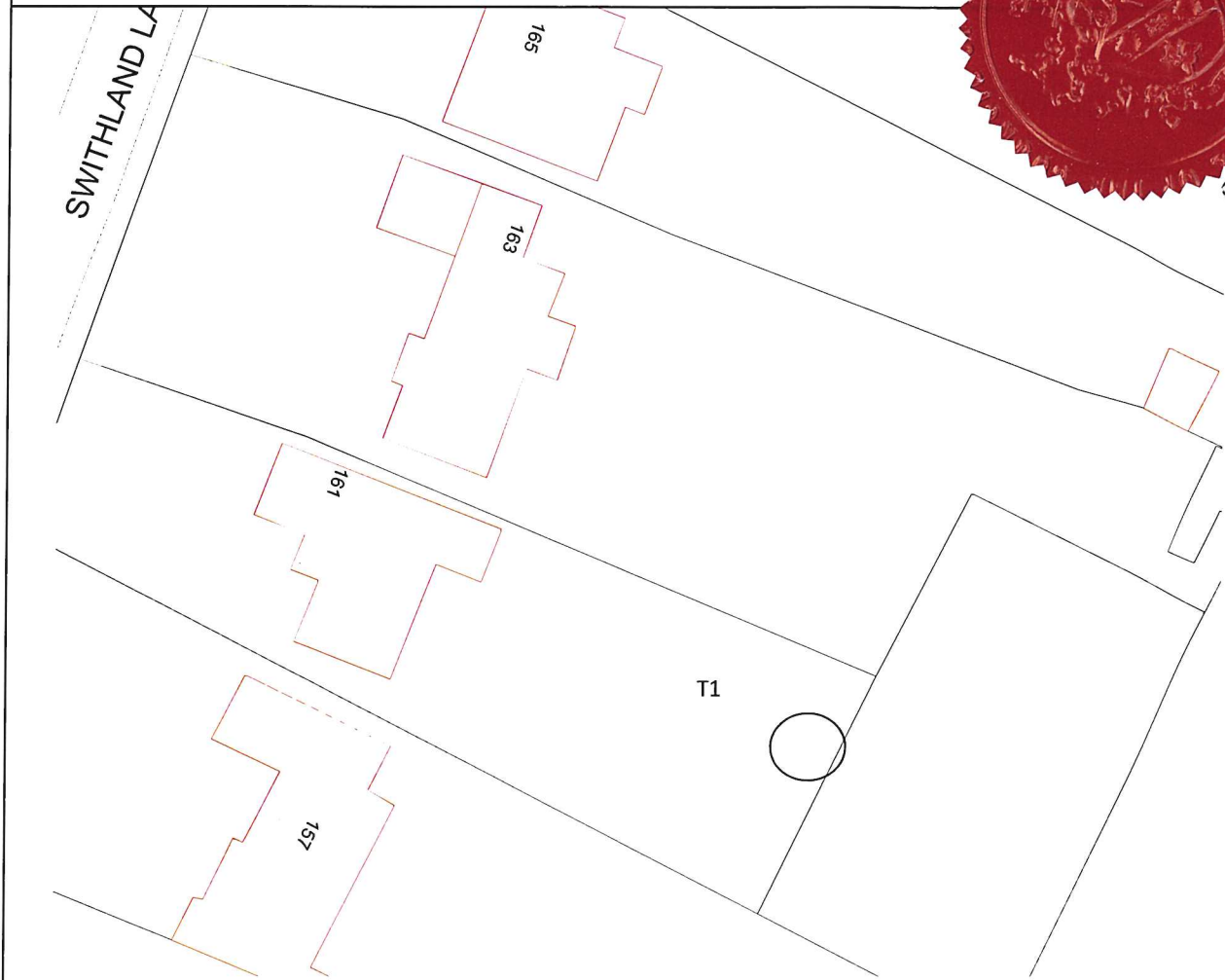
Reference on map	Description	Situation
	None	

I certify this map shows the tree referred to in the first schedule of
the Borough of Charnwood (161 Swithland Lane Rothley) Tree
Preservation Order 2019

Authorised signatory



2019-2071

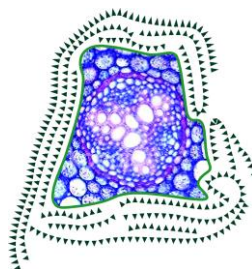


**Borough of Charnwood
(161 Swithland Lane, Rothley)
Tree Preservation Order 2019**

R Bennett Dip. TP. MRTPI
Head of Planning & Regeneration
Borough of Charnwood
Southfields
Loughborough
Leics. LE11 2TN
Date: 8 August 2019
Scale: 1:500
Prep: NOD

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HILL - FORT TREE CARE ANNEX 2



LANDFIELD FARMHOUSE, LITTLE DALBY, LEICESTERSHIRE,
LE14 2UG . TEL/FAX 01664 454699

26 September 2019

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

Dear Mrs Strong,

Burrough of Charnwood (161 SWITHLAND LANE) TREE PRESERVATION ORDER 2019

I write on behalf of my clients Mr and Mrs Barnes of 163 Swithland Lane in objection to the imposition of the Tree Preservation Order (161 SWITHLAND LANE) TREE PRESERVATION ORDER 2019 on the Redwood (*Sequoia sempervirens*) described as T1 in the order and annotated as T1 on the TPO plan.

The tree, a Coastal Redwood (*sequoia sempervirens*) is young, less than 25 years of age and appears in good health and vigour. The top 3-4m of the tree is visible from limited parts of the public highway (Swithland Lane) and a few of the neighbouring properties. It is vigorous and has an aggressive root system that has encroached upon the neighbouring property and caused substantial damage to the adjacent tennis court. The tennis court has been in disuse for the last 6 years or so due to the damage caused by the tree roots making the court unplayable and a danger to users.

The court, built in the 1950's, was professionally re-surfaced to 'county court' standard by Fosse Contractors Ltd of 28 Cannock Street, Leicester LE4 9HR, approximately 14 years ago. The damage, self evidently caused by incremental growth of tree roots, extends well into the centre of the court, has lifted concrete retaining kerbs and the court surface by up to approximately 100mm in height above the laid surface level.

Mark Ashman DIP ARB (RFS), M. ARBOR. A.
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Email: Mark@hill-fort.co.uk

Fosse Contractors Ltd have recently been out to the property again to advise upon repair and resurfacing. Upon inspection the company have declared that the tennis court is irreparable in its current state and that further damage is inevitable if the tree is allowed to continue to grow unabated due to root growth and encroachment.

To respond to several points made in your letter of 30 August 2019: you state (1) that the court is 'old and degraded (2) that cracks are well beyond the zone of influence of the tree and that (3) the court could be designed to minimise the risk of localised disturbance. With due respect:

- (1) The court was resurfaced 14 years ago and is due resurfacing, but its degradation due to tree root damage makes resurfacing impossible. The court requires remedial repair to damage caused by tree roots before any resurfacing can take place.
- (2) It is clear from inspection that damage by tree roots extends to the middle of the court. Tree roots may radiate well beyond twice the height of the tree and according to the 'National House Building Standards (Building Near Trees)' will have a zone of influence up to 0.75 X mature height. That would place the entire court within the zone of influence of the tree.
- (3) I can see that there could possibly be an engineered solution (subject to an engineer's positive advice) where perhaps a substantial reinforced concrete root barrier could be installed to deflect tree roots. However this would, I anticipate, require an increase in court height (building up above the current damage, and very substantial amounts of infill, concrete and steel that would be at great cost both to the those footing the bill and to the environment.

Clearly the tennis court was in existence well before the tree was planted and damage to property by the effects of tree related subsidence and damage by contact are well recognised today. Therefore, any damage caused by the tree would be recognised as foreseeable, and subject to legal advice, the tree owner or responsible occupier of the land would be liable for costs. The Council should it stand in the way (by refusal of consent to fell the tree) of making good the damage at reasonable cost could be subject to a claim for compensation under Part 6, Compensation, of the 'The Town and Country Planning (Tree Preservation)(England) Regulations 2012'.

Insurers are now involved in sorting the matter out and it appears to me that the imposition of a Tree Preservation Order on a tree of limited amenity value, clearly causing damage to neighbouring property, will muddy the waters and increase time spent, anguish and costs in the proceedings, where this should be a matter for simple good neighbourly negotiation.

I urge the council to reconsider the matter and revoke the Tree Preservation Order.

Yours sincerely



Mark Ashman *DIP ARB (RFS), M. ARBOR. A.*
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REPORT OF THE HEAD OF PLANNING AND REGENERATION

APPEALS AND REVIEW COMMITTEE 27 January 2020

BOROUGH OF CHARNWOOD (161 SWITHLAND LANE 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/19/0911/2 was received seeking to fell the tree, a Redwood *Sequoia sempervirens*. Root heave of the neighbour's tennis court surface at 163 was cited. However, the tennis court surface is old and degraded with cracks well beyond the root zone of influence as well as some root heave and is clearly in need of replacement. If the owners resurfaced the court they could design the restored surface to minimise the risk of localized disturbance heave and without loss of this feature tree. Removal of the tree would yield a significant adverse impact on the landscape character of this part of the Conservation Area. The tree is vulnerable to felling to the detriment of the amenity of the area.

Reason for TPO

To ensure the tree, within the garden and which make a significant contribution to the visual amenity of the area as a backdrop to the house, is properly protected and retained in a satisfactory manner.

1.2 The Site

The site is the rear garden to a 161 Swithland Lane. The neighbouring garden with the tennis court is 163 Swithland Lane.

1.3 Condition of the tree

The tree is an early mature specimen and in good physiological condition with good vigor. It is relatively unusual and an interesting feature which merits retention. The amenity value of tree is high by virtue of its species, form, size which extends above the ridge line of houses, and thus visibility. This species is iconic and where possible and practicable worthy of formal protection. The tree contributes to the Character and appearance of the Conservation Area.

2.0 The Objections to the Order

An objection was received from Hill-Fort Tree Services on behalf of the owners of 163 Swithland Lane.

1. It [the tree] is vigorous and has aggressive root system that has encroached upon the neighbouring property and caused substantial damage to the adjacent tennis court. The tennis court has been in disuse for the last 6 years or so due to the damage caused by the tree roots making the court unplayable and a danger to users.
2. The court was resurfaced 14 years ago and is due resurfacing, but its degradation due to tree root damage makes resurfacing impossible. The court requires remedial repair to damage caused by tree roots before any resurfacing can take place.
3. Mr Ashman states he "can see that there could possibly be an engineered solution (subject to an engineer's positive advice) where perhaps a substantial reinforced concrete root barrier could be installed to deflect tree roots. However this would, I anticipate, require an increase in court height (building up above the current damage, and very substantial amounts of infill, concrete and steel that would be at great cost both to the those footing the bill and to the environment.

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

3.0 Response to the Objections

1. The tree species is not particularly aggressive. The tennis court is colonised by moss and algae. The standard lifespan of a tennis court is 15-30 years depending on the construction. Any court will naturally deteriorate over time. Regular maintenance will slow that deterioration but will not prevent it. In the case of private tennis courts if they are neglected the need for resurfacing will occur sooner. The tree surgeon stated the court was laid in 1950s. The design, materials and specifications have dramatically changed over the course of 60 years used for court. The age of the court is almost 60 years old. It was not relaid but only the wearing course resurfaced. No evidence in terms of a tennis court specialists was submitted to back up the claims that the court was irreparable due to the tree rather than merely due to its age and changes in the ground conditions.
2. I do not dispute that current court cannot be re-surfaced.
3. I note Mr Ashman statement on the possibility of an engineered solution. That was my main point. I would further argue that a court the construction of which is 60 years or more old needs a complete redesign and fresh construction.
4. I dispute the need to redesign is solely driven by the effects of the tree but that the age of the basic court construction drives the need for a full and complete refurbishment or reconstruction regardless of whether the tree is felled or not. Therefore I dispute that a claim for compensation under Part 6, Compensation, of the 'The Town and Country Planning (Tree Preservation) (England) Regulations 2012 would be justified. The reason is because no specialist evidence was submitted as part of the objection. Furthermore Part 6 of the Regulations relates to a refusal decision to fell for an application and where

“a person establishes that loss or damage has been caused or incurred **in consequence of—**

(a)

the refusal of any consent required under these Regulations.

The S211 decision pathway cannot grant ‘consent’ nor can it ‘refuse’.

4.0 Conclusion

Removing the Order by failing to confirm it at this appeal and review committee would mean the tree would be felled.

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

Contact Officer:

Nola O'Donnell MAgrSc Dip (hons) LA CMLI

Senior Landscape Officer

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trees@charnwood.gov.uk

<https://fossecontracts.co.uk/tennis/>

<http://www.tennis2000.co.uk/court-resurfacing.htm>



From Swithland Lane



From Gypsy Lane

