

APPEALS AND REVIEWS COMMITTEE 17TH DECEMBER 2018

Report of the Head of Strategic Support

ITEM 5 BOROUGH OF CHARNWOOD (2 BRIDGE STREET, BARROW-UPON-SOAR) TREE PRESERVATION ORDER 2018

The above Order relates to a mature Yew tree (*Taxus Baccata*) which sits at the western boundary perimeter of 2 Bridge Street, with a substantial root system across the boundary into the adjacent and later property of 2a Bridge Street. It was specifically retained when the development of adjacent bungalows was consented. The tree makes a significant contribution to the Conservation Area amenity by virtue of its species type, its stature, health and age. Yews are long lived with an excellent potential for regenerative growth. Following a Conservation Area Notice to fell, the Council's Head of Planning and Regeneration considered it appropriate to ensure that the tree, 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.

Therefore, an Order was made on 24th August 2018 to provisionally protect the tree.

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

An objection to the Order was received from the owner of 2a Bridge Street, Barrow-upon-Soar on 4th September 2018.

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 objectors and the comments of the Head of Planning and Regeneration in accordance with the procedure set out and determine whether or not the Tree Preservation Order should be confirmed.

Officer to contact: Nadia Ansari
Democratic Services Officer
01509 634502
nadia.ansari@charnwood.gov.uk

Town and Country Planning Act 1990
The Borough of Charnwood (2 Bridge Street, Barrow-upon-Soar)
Tree Preservation Order 2018

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 (2 Bridge Street, Barrow-upon-Soar) Tree Preservation Order 2018.

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 twenty fourth day of August 2018

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



2018-19-72

SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

Reference on map	Description	Situation
T1	Yew taxus baccata	<p>Situated on the western boundary perimeter of 2 Bridge Street.</p> <p>The OS grid reference for the site is SK 457438 317322.</p>

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)

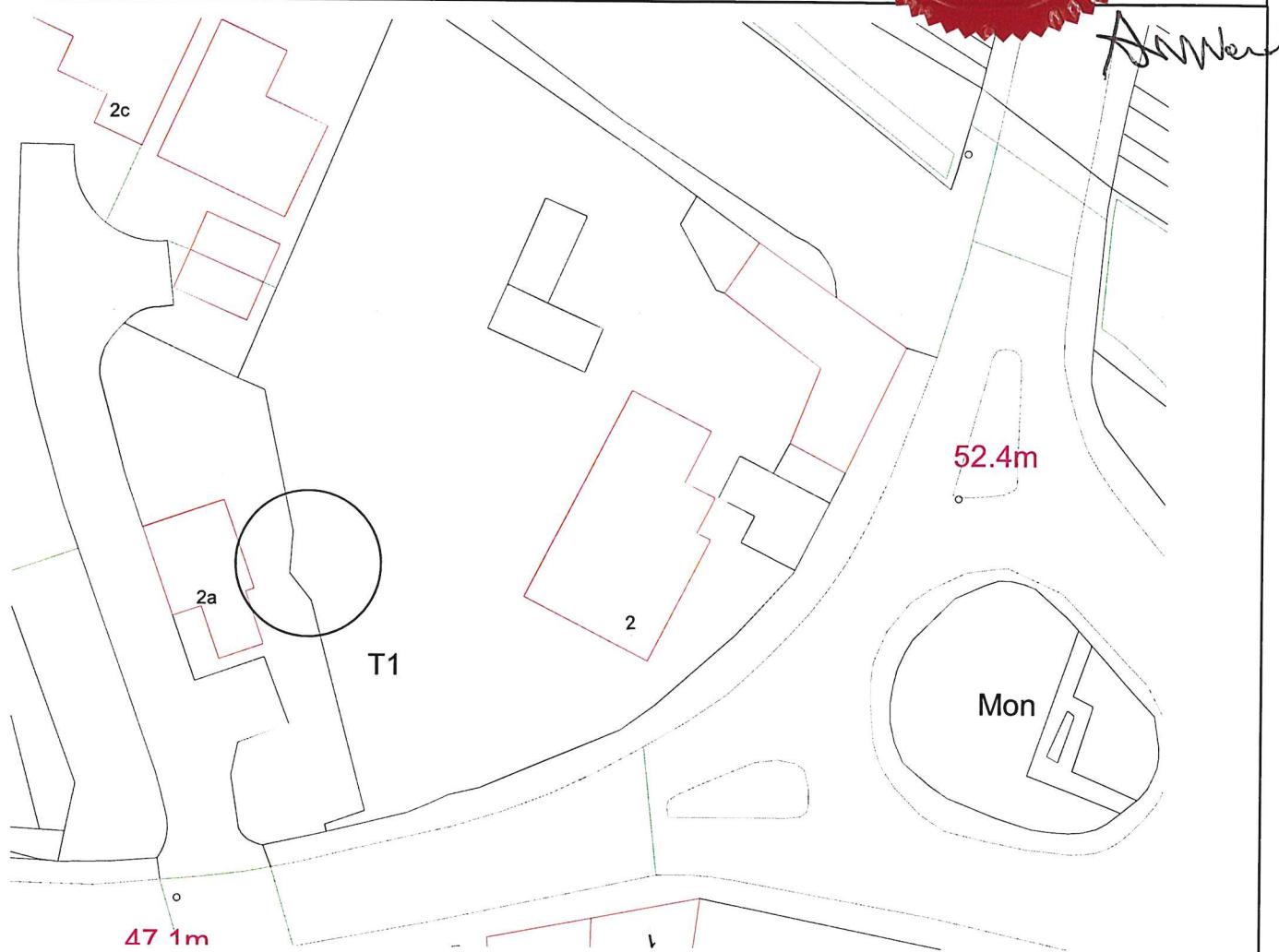
Reference on map	Description	Situation
	None	

I certify this map shows the tree referred to in the first schedule of
the Borough of Charnwood (2 Bridge Street Barrow-upon-Soar) Tree
Preservation Order 2018



N
▲

Authorised signatory



**Borough of Charnwood
(2 Bridge Street Barrow-upon-Soar)
Tree Preservation Order 2018**

R Bennett Dip. TP. MRTPI
Head of Planning & Regeneration
Borough of Charnwood
Southfields
Loughborough
Leics. LE11 2TN
Date: 24 August 2018
Scale: 1:500
Prep: NOD

Strong Laura

From: Alan Hunt < >
Sent: 18 September 2018 18:36
To: Strong Laura
Subject: Re: 2a Bridge Street Barrow upon Soar LE12 8PN

Dear Laura,
Yes it is an objection.
Kind regards
Alan Hunt

Sent from my iPhone

On 18 Sep 2018, at 16:50, Strong Laura <Laura.Strong@charnwood.gov.uk> wrote:

NOT PROTECTIVELY MARKED

Dear Mr Hunt

I would be most grateful if you could please confirm whether your email below is an objection to the Borough of Charnwood (2 Bridge Street, Barrow-upon-Soar) Tree Preservation Order 2018?

Regards

Laura Strong
Democratic Services Officer
Charnwood Borough Council
Southfield Road, Loughborough LE11 2TX
E-mail: laura.strong@charnwood.gov.uk
Tel: 01509 634734

www.charnwood.gov.uk

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From: Alan Hunt [mailto:alan.hunt@charnwood.gov.uk]
Sent: 04 September 2018 10:51
To: Strong Laura; development.control@charnwood.gov.uk
Cc: Sloan, George
Subject: 2a Bridge Street Barrow upon Soar LE12 8PN

Dear Sirs,

Re: Planning Consent No. P/17/2166/2 and Planning Application No. P/18/1169/2

I have been advised by the Planning Inspectorate to write to you explaining my current predicament and to seek your guidance.

As per the above application reference I was granted consent to erect a single storey extension to my house at 2a Bridge Street. There were no conditions in terms of tree protection nor was an

Arboriculturist Statement requested. The extension will abut my neighbour's (2 Bridge Street) boundary at the point where there is a large (slowly dying) Yew tree. In discussion with my neighbour, my concern was what the effect my new foundations would have on the root system of the tree, potentially affecting its stability. He was happy to remove the tree for the safety of both our sakes. I have submitted an Arboriculturist report and a Structural Engineers report which both confirm that the root system will be compromised.

I consequently applied to have the tree felled (Application No. P/18/1169/2) as we are in a conservation area.

This was refused and a TPO was placed on the tree. I subsequently reapplied to have the tree now with a TPO, felled. As no decision was made by the designated date, 31 July 2018, I submitted an appeal to The Planning Inspectorate.

I then received the formal notice which took effect, on a provisional basis on 24th August 2018. The Planning Inspectorate advised me that as a consequence my appeal will be held in abeyance for up to six months. They felt in the circumstances that I should ask the planning department to look at where this leaves me.

I can simply proceed with what I have planning for which will involve disturbing the root system and whilst every care will be made to not compromise its stability (for my own safety and at considerable extra cost for specialist foundations) there can be no guarantee that it wont. My planning consent did not require me to protect this (which didn't have a TPO on it at the time) or any other tree however my build may render it dangerous.

As I am prepared for the planting of another tree in a safer position in place of the subject tree the Planning Inspectorate felt that common sense could be applied to avoid a difficult and potentially dangerous situation arising.

I would be grateful for your comments prior to the commencement of my build.

Yours faithfully

Alan W Hunt

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REPORT OF THE HEAD OF PLANNING AND REGENERATION**APPEALS AND REVIEW COMMITTEE 17TH DECEMBER 2018****PROVISIONAL TREE PRESERVATION ORDER - BRIDGE STREET, BARROW-UPON-SOAR)****1.0 Introduction****1.1 Background**

The Council received a Conservation Area Notification (CAN) P/18/0810/2 to fell a yew tree located in the rear garden of 2 Bridge Street. Prior to the expiry date of the CAN, I visited the site to inform my recommendation process. I recommended making a TPO and subsequently a Provisional Tree Preservation Order was served on the 24 August 2018 to protect the tree. The Order is considered an appropriate mechanism to prevent tree felling.

The tree in question is mature Yew tree (*Taxus Baccata*) which sits at the western boundary perimeter of 2 Bridge Street, OS grid reference SK 457438 317322, with a substantial root system across the boundary into the adjacent and later property of 2a Bridge Street.

This was specifically retained when the development of adjacent bungalows was consented P/07/0292/2. It makes a significant contribution to the Conservation Area amenity by virtue of its species type, its stature heath and age. Yews are long lived with an excellent potential for regenerative growth.

Consent for the original, subsequently revised, scheme for demolition of a bungalow and erection of 2 new bungalows P/07/0292/2 stipulated in the conditions the need to protect the tree - Condition 16, for trees along the western boundary and condition 17, for site works tree protection, for all trees to be retained.

The revised scheme for three dwellings P/09/0715/2 did not acknowledge the existence of the yew tree on plan while the arboricultural report referenced it in G1. The application noted the importance of trees within the boundary of the development site and recognized the importance of their retention.

The constructed development has a boundary fence which is kinked to accommodate and retain the whole trunk of the Yew within the garden of 2 Bridge Street. This suggests a clear intention to retain and accommodate the tree after development completion. At no time was there a suggestion that the tree should be removed.

The subsequent application P/17/2166/2 for the extension of 2a Bridge Street did not specifically reference the tree in the information submitted with the applications, although the existing and proposed elevations drawing No. 17-91-2 show pile foundations in order to accommodate significant tree roots (see appendix)

The case officers committee report references verbal advice from the Conservation & Design Officer “*The extension is located to the side of the property and is well screened from Bridge Street. The proposal takes account of changes in ground levels and utilises materials considered appropriate for the original house and Conservation Area. Piled foundations are intended to be used to ensure that damage is not caused to the root systems of adjacent trees and in these ways natural features can be retained. It is therefore considered that the proposal would have a neutral impact on the setting of the Listed Building and the character and appearance of the Conservation Area.*”

The Conservation Area Notice P/18/0810/2 to fell returned a decision to place the tree under a Tree Preservation Order. The subsequent Tree Works Application P/18/1169/2 sought to fell the tree on grounds that it would be compromised by the consented extension and that protecting it would be costly. It is a matter for the applicant to explore how they might be able to build an extension to their consented plans while also protecting the tree. The consented extension can still proceed but the position of the Local Planning Authority is the tree should be retained.

1.2 The Site

The site is the rear garden to a prominent house 2 Bridge street at the roundabout junction of Bridge Street, High Street and Sileby Road.

1.3 Condition of the tree

The public amenity value of tree is high. There is some dieback which is the result of construction of the bungalow but there is also regenerative growth indicating that the tree is recovering. It contributes to the landscape character of the Conservation Area of Barrow-upon-Soar at this key junction.

2.0 The Objections to the Order

An objection to the Order was received from the owner of 2a Bridge Street, Barrow-upon-Soar on 4th September 2018.

Objection -

Object to TPO

1. “*As per the above application reference [Planning Consent No. P/17/2166/2] I was granted consent to erect a single storey extension to my house at 2a Bridge Street. There were no conditions in terms of tree protection nor was an Arboriculturist Statement requested.*”

2. “*The extension will abut my neighbour's (2 Bridge Street) boundary at the point where there is a large (slowly dying) Yew tree. In discussion with my neighbour, my concern was what the effect my new foundations would have on the root system of the tree, potentially affecting its stability. He was happy to remove the tree for the safety of both our sakes.*”
3. *I have submitted an Arboriculturist report and a Structural Engineers report which both confirm that the root system will be compromised.*
4. *“I consequently applied to have the tree felled (Application No. P/18/1169/2) as we are in a conservation area. This was refused and a TPO was placed on the tree. I subsequently reapplied to have the tree now with a TPO, felled. As no decision was made by the designated date, 31 July 2018, I submitted an appeal to The Planning Inspectorate. I then received the formal notice which took effect, on a provisional basis on 24th August 2018. The Planning Inspectorate advised me that as a consequence my appeal will be held in abeyance for up to six months. They felt in the circumstances that I should ask the planning department to look at where this leaves me. ”*
5. *“I can simply proceed with what I have planning for which will involve disturbing the root system and whilst every care will be made to not compromise its stability (for my own safety and at considerable extra cost for specialist foundations) there can be no guarantee that it wont. My planning consent did not require me to protect this (which didn't have a TPO on it at the time) or any other tree however my build may render it dangerous.”*

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

3.0 Response to the Objections

1. There were no conditions in respect of the yew tree applied because the consented plans showed piled foundations to protect the root system.
2. No objection to the Order was received from the owner.
3. The tree report/ statement dated 23 May 2018 does not claim that the tree is dying nor does it state that the tree could not be protected. It references conventional construction only in relation to potential damage to the tree and makes no reference to specialist pile foundations. The Engineers letter dated 24 May 2018 expressing an opinion first states they would “*recommend either a mini piles slab or concrete raft as the most appropriate solution for the foundations given the ground conditions*” and that “*both options would also minimise any detrimental impact to the nearby trees*” They then, in

contradiction with the above states “*However both foundations solutions, whether raft or piled, would cause irreparable damage to the adjacent yew tree root system. This is because of the relative ground level along the boundary. Any foundations option (because of the need for ground beams and a new concrete slab) would inherently cut into the current ground level thus the yew tree would lose significant root area. In our opinion the tree would become unstable and the loss of root zone would most likely kill the tree*”” This would appear to be at variance with the BS guidance that no dig solutions are possible and that pile or raft foundations are frequent cited solutions to avoid critical damage to tree roots.

4. The reason the Planning Inspectorate held the appeal in abeyance was because the TPO had not been formally created.
5. The TPO does not prevent Mr Hunt from proceeding with the consented extension as the planning consent is for piled foundations. This is one of several specialist forms of foundation design for avoidance of or mitigation of damage to root systems often recommended by arboricultural consultants.

4.0 Conclusion

Removing the Order by failing to confirm it at this Appeals and Reviews Committee would mean the tree would be felled.

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

Contact Officer:

Nola O'Donnell MAgSc Dip (hons) LA CMLI

Senior Landscape Officer

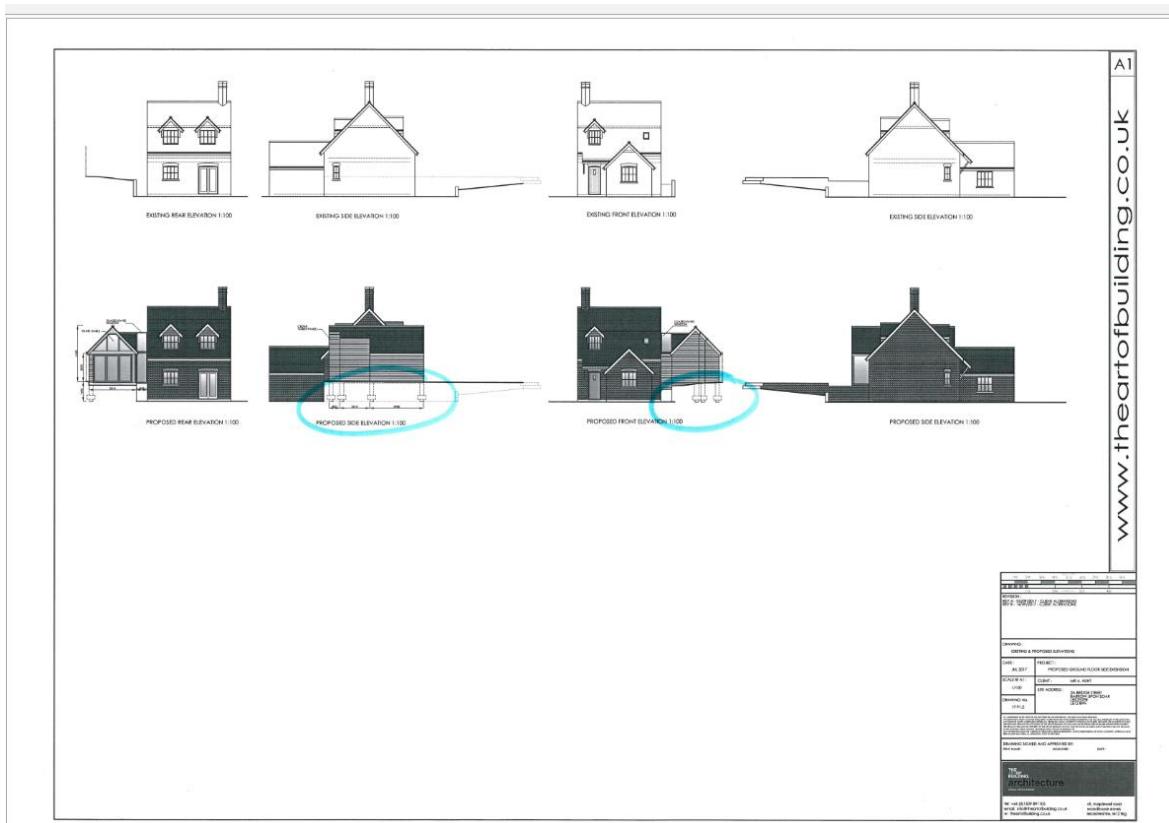
Tel: 01509 634766

trees@charnwood.gov.uk

APPENDIX A

CONSENTED SECTION PLANS P/17/2166/2

These plans show that piled foundation were consented the purpose of which were to protect the tree.



APPENDIX B – THE ARBORICULTURAL REPORT/ STATEMENT CITED IN THE OBJECTION

The Arboricultural Statement does not claim that the tree would certainly be damaged or die as a consequence of piled foundation construction.

It expresses an opinion regarding the fact that an arboricultural method statement was not required as part of the application to build the extension. Further information was not required when the extension application P/17/2166/2 was pending because during that process the applicant was advised of the merit of piled foundations in regard to trees. I personally was not involved in the extension application P/17/2166/2.

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18 / 1169 / 2 - 5 JUN 2018

Arboriculturist Statement May 23rd 2018.

Your planning permission does take precedence over the TPO. If the tree was in the footprint of the extension for example you would have been able to take it down. The council should have sorted out tree protection out before giving planning consent.

You have planning permission and the council have not demanded an Arboricultural Method Statement (AMS).

If you undertake the build, there is a reasonable chance that the root damage will lead to the tree dying. It is a criminal offence to cut down, top, lop, uproot, wilfully damage or wilfully destroy a tree protected by that order, or to cause or permit such actions, without the authority's permission.

The council has not demanded the AMS and as a lay person you could claim ignorance if the tree were to die. If you had had professional advice from an arboricultural consultant prior to the application that might be different. Using non-conventional methods may well compromise your designs and will certainly increase the budget.

Ben Edmonds BSc Tech.Arbor.A
www.canopytrees.co.uk
01332 875 869


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SSIP

THE ENGINEERS LETTER CITED IN THE OBJECTION

187 116972

1(2a)

JENSENHUNT DESIGN
- 5 JUN 2018

Alan Hunt
2A Bridge Street
Loughborough
England
LE12 8PN

24th May 2018
Ref: AWH/2A Bridge St

2A Bridge Street - Structural Proposals & Trees

Dear Mr Hunt,

We are writing in regard to the current granted planning proposals for a side extension to 2A Bridge Street (reference P/17/2166/2).

We have carried out a review of the proposals and would recommend either a mini piled slab or concrete raft as the most appropriate solution for the foundations given the ground conditions. Both options would also minimise any detrimental impact to the nearby trees.

However, both foundations solutions, whether raft or piled, would cause irreparable damage to the adjacent Yew tree root zone. This is because of the relative ground level along the boundary. Any foundation option (because of the need for ground beams and a new concrete slab) would inherently cut into the current ground level thus the yew tree would lose significant root area. In our opinion the tree would become unstable and the loss of root zone would most likely kill the tree.

We strongly advise that the yew tree is removed prior to any construction works so not to cause any potential health and safety concerns.

Please let me know if you would like to discuss this at all.

Yours sincerely

James Mickelburgh



Director
Chartered Structural Engineer
B.Eng (Hons), C.Eng., M.I.Struct.E

APPENDIX C - BS 5837:2012 EXTRACT

Here is an extract from the British Standard BS 5837:2012 outlining the benefit of pile and raft foundations to minimize potential damage to roots:

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ncontrolled Copy, © BSI

7.5 Special engineering for foundations within the RPA

7.5.1 The use of traditional strip footings can result in extensive root loss and should be avoided. The insertion of specially engineered structures within RPAs may be justified if this enables the retention of a good quality tree that would otherwise be lost (usually categories A or B). Designs for foundations that would

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BRITISH STANDARD

BS 5837:2012

minimize adverse impact on trees should include particular attention to existing levels, proposed finished levels and cross-sectional details. In order to arrive at a suitable solution, site-specific and specialist advice regarding foundation design should be sought from the project arboriculturist and an engineer. In shrinkable soils, the foundation design should take account of the risk of indirect damage (see **A.1.4**).

7.5.2 Root damage can be minimized by using:

- piles, with site investigation used to determine their optimal location whilst avoiding damage to roots important for the stability of the tree, by means of hand tools or compressed air soil displacement, to a minimum depth of 600 mm;
- beams, laid at or above ground level, and cantilevered as necessary to avoid tree roots identified by site investigation.

7.5.3 Where a slab for a minor structure (e.g. shed base) is to be formed within the RPA, it should bear on existing ground level, and should not exceed an area greater than 20% of the existing unsurfaced ground.

7.5.4 Slabs for larger structures (e.g. dwellings) should be constructed with a ventilated air space between the underside of the slab and the existing soil surface (to enable gas exchange and venting through the soil surface). In such cases, a specialist irrigation system should also be employed (e.g. roof run-off redirected under the slab). The design of the foundation should take account of any effect on the load-bearing properties of underlying soil from the redirected roof run-off. Approval in principle for a foundation that relies on topsoil retention and roof run-off under the slab should be sought from the building control authority prior to this approach being relied on.

7.5.5 Where piling is to be installed near to trees, the smallest practical pile diameter should be used, as this reduces the possibility of striking major tree roots, and reduces the size of the rig required to sink the piles. If a piling mat is required, this should conform to the parameters for temporary ground

|◀◀ 33 OF 50 ▶▶| ◎ ◯

APPENDIX D PHOTOGRAPHS OF THE YEW TREE



View across the roundabout junction towards 2 bridge street



View from Bridge street towards 2a with yew tree in the immediate background



View from access drive entrance off Bridge Street with 2a and yew tree