

**APPEALS AND REVIEWS COMMITTEE  
11TH SEPTEMBER 2019**

**Report of the Head of Strategic Support**

ITEM 5    BOROUGH OF CHARNWOOD (2 AND 6 MILL HILL LEYS,  
WYMESWOLD) TREE PRESERVATION ORDER 2019

The above Order relates to a group of three ash trees (G1), located as indicated on the plan attached to the Order (see Annex 1). Following concerns that one of the trees may be removed, the Council's Head of Planning and Regeneration considered it appropriate to protect all three trees given their significant contribution to the street scene and the visual amenity of the area through the making of this Tree Preservation Order.

Therefore, an Order was made on 1st April 2019 to provisionally protect the trees.

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

An objection to the Order was received from Louise Pinsent of 4 Mill Hill Leys, Wymeswold on 20th April 2019.

A copy of the objection is attached at **Annex 2**. This includes a report on damage to the objector's property, which the objector has asked be included.

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

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

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

**Town and Country Planning Act 1990**  
**The Borough of Charnwood (2 and 6 Mill Hill Leys, Wymeswold)**  
**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 (2 and 6 Mill Hill Leys, Wymeswold) 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 first day of April 2019

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



*[Handwritten signature]*

2019-20-1

## SPECIFICATION OF TREES

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

Reference on map	Description	Situation
	None	

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

Reference on map	Description	Situation
	None	

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

Reference on map	Description (including number of trees in the group)	Situation
G1	3 ash trees	Grid reference SK60336 23682

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

Reference on map	Description	Situation
	None	

2019-20-1

I certify this map shows the tree referred to in the first schedule of the Borough of Charnwood (2 and 6 Mill Hill Leys Wymeswold) Tree Preservation Order 2019



Authorised signatory ..... *Ann Wall* .....



**Borough of Charnwood**  
**(2 and 6 Mill Hill Leys Wymeswold)**  
**Tree Preservation Order 2019**

R Bennett Dip. TP. MRTPI  
Head of Planning & Regeneration  
Borough of Charnwood  
Southfields  
Loughborough  
Leics. LE11 2TN  
Date: 3 December 2018  
Scale: 1:500)  
Prep: NOD

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Louise Pinsent  
4 Mill Hill Leys  
Wymeswold  
LE12 6UU

17.4.19

Dear Ms Strong,

I am writing to formally object to the tree preservation order made in respect of trees in the gardens of 2 and 6 Mill Hill Leys, Wymeswold.

The reasons stated for preserving the trees in the interim order are not accurate and I do not believe this is an appropriate use of the Tree Preservation Order legislation.

1. The trees make a significant contribution to the street scene. The trees are not visible to the street other than the tops of the trees over the houses. The trees are only visible to numbers 2, 4 and 6 Mill Hill Leys and are contained in private gardens.
2. The correct owner for the field affected has not been informed. (explained in detail below)
3. Concerns that one of the trees may be removed. This is not an accurate statement. The tenant farmer of the field approached 2 and 4 Mill Hill Leys to remove some of the height of trees as part of general land management practices on the entire hedgerow. I heard this approach and refusal. I understand both neighbours have been approached on a number of occasions but have refused access. The farmer is concerned that he may attract liability for damage given the height of the trees. This is explained in more detail below.

I set out my further concerns with regard to the trees in question below.

When I purchased my house in 2007 the trees in question were in the field and were some significant distance beyond the outer boundary fencing for the development. The field was owned by Punch Taverns. Please note the owner of the field was not – and is not - the Three Crowns Public House but is under the ownership of the brewery as a separate entity. That ownership has subsequently been purchased by Star Bars and Pubs (Heineken) and is still owned as a separate entity that is not connected to The Three Crowns Public House.

In 2011 my neighbours (2 and 6 Mill Hill Leys) moved their boundary fence to take some of the land in the field and in doing so both neighbours brought mature trees from the field into their back gardens. It should be noted that the current tenant farmer of the field in question was the owner of all the land that was sold to Wimpey's for this development and he confirms that the land sold did NOT include the boundary hedgerow and this should form part of land now owned by Star Bars and Pubs. The proper boundary is evident on a simple visible inspection from the field and indeed all the other trees on the boundary line remain in the field.

The tenant farmer carries out regular maintenance of the trees on the boundary line and has approached number 2 and 6 Mill Hill Leys and informed them that he wishes to carry out such maintenance but this request has been denied on a number of occasions over the years. The farmer was so concerned at the height of the trees and their proximity to my house he visited me to express his concerns. He is obviously concerned that he may attract liability should any damage occur to the property.

I have now spoken to Star Bars and Pubs in relation to this matter and they intend to review the situation with the land registry to establish the true owner of the land and trees. Particularly as the layout of the three plots (2,4,6) now has no resemblance to the transfer plan from Wimpey's.

Until this month – despite frequent requests – neither neighbour has carried out any pruning or remedial work on any of the trees and therefore they have been allowed to grow to their current height (far taller than the house) and until this month were covered in ivy.

I contacted the council in 2018 to ask for help in dealing with this matter but whilst sympathetic the council could not help under the high hedges legislation as the trees are not evergreen. The homeowner at 2 Mill Hill Leys has removed the ivy and undertaken some slight thinning of one tree but the height remains. A large overgrown hawthorn bush has been removed. However you will be able to see from the attached photograph (**photograph one**) that the tree branches are still growing over my land and garage roof. You will also be able to further see that the tree branches of the two large trees are almost touching and therefore in a very short period of time (when the trees are in leaf) the rear of my house will be in total darkness once more.

I should make clear that although the trees are situated in the adjoining property gardens they are considerably closer in proximity to my house and garage. The trees form a line at the rear of my house yet do not affect the light or enjoyment of each of either of the adjoining properties. The most significant tree is not a single tree but group of large trees (**photograph two attached**) is circa 8 metres from my house. The tree behind my garage (**picture three attached**) is circa two metres away from my garage and leaning at an angle towards my property and overhanging my garage roof. Both the single and group of trees are considerably higher than the two storey house (**picture four attached**).

The trees have a significant effect on the enjoyment and value of my property and this has caused my mental health to suffer. I have been signed off work by the doctor for the last nine weeks due to stress. I have never been absent from work with any long term sick issue during my entire 34 year career. I list below the issues the trees have caused.

The soil in this area of Wymeswold is clay soil and it is well established that large trees close to a house can cause subsidence damage as they seek water in warm months. The ash tree is a fast growing deciduous tree which prefers moist conditions and whose roots will spread wide distances to find water therefore most reputable house insurers recommend these are best avoided – or maintained at a sensible height - near houses as they can cause subsidence issues. We are finding it increasingly difficult and expensive to obtain house insurance due to the height and proximity of the trees. We are not able to mortgage our property with a new lender – or sell our house – due to the issues the trees present to lending criteria.

We were particularly distressed to discover this summer that our house now has subsidence issues. Our conservatory now has subsidence issues on both sides of the walls (**pictures five and six attached**). We have now been put to considerable expense and distress in engaging a solicitor (Richard Bates, Rothera and Sharpe) and a building surveyor to take court action to recover our loss in an action of negligence. The large group of trees is considered to be the cause. The deeds to all of the properties contain a covenant that no homeowner can restrict, or allow any matter to restrict, the enjoyment of a neighbouring property. We remain (as does our insurer) exceptionally concerned that our home and garage will be subject to further damage whilst the height, roots and proximity of the trees remain as they are.

The owner of number 2 Mill Hill Leys allowed the branches of their tree behind the garage to grow over our property and rest on our garage roof (**picture seven enclosed**). Despite frequent requests for this to be cut back we were forced to procure this work ourselves at considerable cost as the roof was being damaged by the weight of the branches resting on the tiled roof.

The design of my house (is the same as 2 and similar to 6) in that the largest windows of the house are at the rear of the property. The kitchen and lounge have patio doors which lead into the garden. The height and depth of the hedgerow mean the house is constantly dark requiring lights on even in the summer months and despite the field and the rest of the road being in sunlight (including 2 and 6) I am not able to enjoy my garden. Please see (**picture eight attached**) which demonstrates the scale of the issue. You will notice the small arc the homeowner at number 2 Mill Hill Leys cut into the foliage.

I have a conservatory situated on the back of my kitchen with a glass roof. I am constantly worried the roof or windows will break when the weather is windy. There no natural wind break before the trees and when there are high winds large debris falls from the tree into the garden and onto the roof of the conservatory. This is the same for the cars which are parked on our drive.

The gutters on my house, conservatory and garage are constantly full of debris and need to be cleared on a weekly basis. This means we have to constantly climb ladders to clear this debris and dispose of it. We are unable to clean the gutters at the higher points of the house and therefore risk damage to the property.

We have to continually remove – and dispose - of the deluge of leaves and debris which fall into our garden from the trees. I am not small minded enough to mind clearing neighbours leaves however due to the size of the trees the leaves falling are inches thick. This is necessary as the leaves are damp and therefore could cause a slip and fall. My husband has a long standing disability to his leg which leaves him vulnerable to a fall. He also has a serious injury to his arm which has resulted in him having very little bone (and mainly steelwork) between the elbow and wrist of one arm. Any fall would have a catastrophic impact.

The roots of the trees behind the garage pushed up and damaged our paving and we have had to replace all the paving at considerable cost (**photographs nine and ten attached**)

As noted earlier I respectfully challenge the validity that the trees enhance the street scene. The only house household that can view the full spectrum of trees is mine (the tree behind my garage is not visible from the house of number 2 despite it being in their garden). The large group of trees is not visible to the road at all other than the tips over the house roof (**photograph 11 enclosed**) and the tree at number 6 is partially visible from the driveway. The trees do not add to the character or appearance of the area and are not a rare species.

I believe this tree preservation order has been sought simply as a method to not undertake responsible pruning on a regular basis. This is evidenced by despite the fact that some pruning has taken place we are still left with branches overhanging our property. If this order is granted it will cause us to suffer greater financial loss and medical impact than we already are suffering.

Kind regards

Louise Pinsent

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## **Strong Laura**

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**From:** Louise Cooling <  
**Sent:** 24 July 2019 08:16  
**To:** Strong Laura  
**Cc:** Joanne.Higgins  
**Subject:** FW: Our Ref: 8595604/LBHPE-SUB-HUB

Dear Laura,

Please see below the report received from our insurance company (Legal and General) on the damage to our property. I would be grateful if you could arrange for this report to be included in the papers for the tree preservation hearing.

I can confirm my husband and I will be attending the hearing in person.

Kind regards

Louise

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**From:** Robert Walker <  
**Sent:** 23 July 2019 14:46  
**To:** louise.cooling  
**Cc:** Alexander.Goodrich  
**Subject:** Re: Our Ref: 8595604/LBHPE-SUB-HUB

Sedgwick International UK Ref: 8595604  
Insurer's Claim Ref: D141012203  
Re: Ms Louise Cooling Insurance Claim

Policyholder: Ms Louise Cooling

Subject Property Address:

4 Mill Hill Leys  
Wymeswold  
LOUGHBOROUGH  
LE12 6UU

**INSURANCE CLAIM**

**CONCERNING SUSPECTED SUBSIDENCE**

**ENGINEERING APPRAISAL REPORT**

This report is prepared on behalf of Legal & General Insurance for the purpose of investigating a claim for subsidence. It is not intended to cover any other aspect of structural inadequacy or building defect that may otherwise have been in existence at the time of inspection.

Date: 23/07/2019

Our Ref: 8595604

## **INTRODUCTION**

The technical aspects of this claim are being overseen by our Building Consultant Robert Walker BSc (Hons) Building Surveying C.Build E MCABE Chartered Building Engineer & Building Surveyor, in accordance with our Project Managed Service.

## **DESCRIPTION OF BUILDING**

The property is Semi detached house situated in a village location. The property structure comprises load-bearing masonry walls supporting a pitched tiled roof, with timber floors at first floor level, and a suspended solid floor at ground level. A single storey extension, forming the Conservatory, has been constructed to the rear right corner of the property.

## **DISCOVERY OF DAMAGE**

The policyholder first discovered the crack damage in Late autumn 2018 and PH noted crack damage and approached her neighbour/tree owner regarding the potentially offending tree. Contacted insurer.

## **NATURE AND EXTENT OF DAMAGE**

### Description and Mechanism

The main area of damage affects the Conservatory and takes the form of Stepped diagonal cracking affecting sub-structure/super-structure brickwork accompanied by slope of window heads/sillss towards the rear.

This pattern of damage indicates a mechanism of Downward rotational towards rear.

### Significance

The level of damage is moderate, and is classified as category 3 in accordance with BRE Digest 251 - Assessment of damage in low-rise buildings.

## **Appendix 1**

Category of damage	Description of typical damage <i>Ease of repair in italics</i>
0	Hairline cracks of less than about 0.1mm width are classed as negligible. Approximate crack width up to 0.1mm
1	Perhaps isolated slight fracturing in building. Cracks rarely visible in external brickwork. <i>Fine cracks up to 1mm width can be treated easily using normal decoration.</i> Approximate crack width up to 1mm
2	<i>Cracks easily filled. Recurrent cracks can be masked by suitable linings.</i> Cracks not necessarily visible externally; some <i>external repointing may be required to ensure weather-tightness.</i> Doors and windows may stick slightly and <i>require easing and adjusting.</i> Approximate crack width up to 5mm
3	Doors and windows sticking. Service pipes may fracture. Weathertightness often impaired. <i>The cracks will require some opening up and can be patched by a mason. Repointing of external brickwork and possibly a small amount of brickwork to be replaced.</i> Approximate crack width 5-15mm or several, each up to 3mm
4	Windows and door frames distorted, floor sloping noticeably. Walls leaning or bulging noticeably. Some loss of bearings in beams. Service pipes disrupted. <i>Extensive repair work involving breaking-out and replacing sections of walls, especially over doors and windows.</i> Approximate crack with 15-25 mm, depending on number.
5	Beams losing bearing, walls leaning badly and requiring shoring. Windows broken with distortion. Danger of instability. <i>This requires a major repair, involving partial or complete rebuilding.</i> Cracks usually greater than 25 mm, depending upon number

### Onset and Progression

We consider that the damage has occurred recently. It is likely that movement will be of a cyclical nature with cracks opening in the summer and closing, partially at least, during winter recovery.

### **SITE INVESTIGATION**

A trial pit and borehole ground investigation was undertaken at the rear right corner of the Conservatory in order to determine the conditions at foundation level and the nature of the founding strata.

The ground investigation revealed a concrete trench fill footing at the relatively shallow depth of 0.6 m below ground overlying gravelly silty CLAY of medium shrinkage potential, which extended to a depth of 3.1 m below ground level where the investigation was terminated. Numerous roots were encountered beneath the foundation to a depth of 1.6 m below ground level; laboratory testing confirmed these roots to emanate from the Fraxinus (Ash) tree species.

### **CAUSE OF DAMAGE**

When considering the evidence obtained from our visual inspection and appraisal and the subsequent ground investigation it is my considered opinion that the cause of damage to the Conservatory is the result of clay shrinkage subsidence exacerbated by the water demands of nearby vegetation, in this case the Ash tree(s) located beyond the rear boundary of the property.

## RECOMMENDATIONS

### Mitigation

The removal of the offending vegetation will provide a permanent solution to the current subsidence problems affecting the conservatory. Such action has the advantage that it is economic; it will not result in possible heave problems.

### Repair

Following successful tree mitigation work and a period to allow for soil recovery sub-structure and superstructure repairs to brickwork can be carried out. In conjunction with this work it is likely that realignment of distortions to window and door openings will be necessary.

Robert Walker

BSc (Hons) Building Surveying C.Build E MCABE Chartered Building Engineer & Building Surveyor

**Robert Walker** | BSc (Hons) Building Surveying C.Build E MCABE, Building Consultant

**Sedgwick International UK**

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APPEALS AND REVIEW COMMITTEE 11<sup>th</sup> September 2019

Provisional Tree Preservation Order – 2 and 6 Mill Hill Leys Wymeswold

## 1.0 Introduction

### 1.1 Background

Following a request from the owner of 2 Mill Hill Leys the Council's Senior Ecological Officer made a visit to 2 Mill Hill Leys in order to assess a number of trees to the rear of the property.

The trees concerned were located within a boundary hedgerow to the rear of this and two neighbouring properties (4 and 6 Mill Hill Leys).

The owner alleged that neighbours had threatened to fell the trees in the near future regardless of whether access or permission was granted.

### 1.2 The Site

Mill Hill Leys lies off Wysall Lane on the north side of the village of Wymeswold. Numbers 2, 4 and 6 Mill Hill Leys are located on the western side of the street with open countryside to the rear. The trees in question are to the rear of all 3 properties. Although there appears to be some dispute about the precise location of the boundary the trees would appear to form part of a relict hedgerow forming the adjacent field boundary.

### 1.3 Condition of the trees

All three trees are ash *Fraxinus excelsior* and form a more or less continuous group. Being grown out of an old hedge the trees are -multi stemmed and appeared to be in good health at the time of the visit.

All the trees were in a similar condition and were therefore assessed as a single group (G1) using the TEMPO evaluation method with the following results:

Table 1: TEMPO assessment results

Criteria	Assessment	Score
<b>Condition</b>	Fair	3
<b>Remaining longevity</b>	40+ years	4
<b>Relative visibility</b>	Medium trees with limited visibility	3
<b>Other factors</b>	Tree group, or members of groups important for their cohesion	4
<b>Expediency</b>	Forseeable threat to tree	3 (+)
<b>Total</b>	-----	<b>17</b>

The TEMPO assessment method is not mandatory but is a widely used standard and objective method for assessing a tree's suitability for TPO. Trees or tree groups with a score of 16 or more are considered to "Definitely merit" a TPO.

Following the issuing of the provisional order a request was made for a further site visit on 28<sup>th</sup> May. On arrival at the site it was observed that the two ash trees (forming part of group G1) to the rear of 2 Mill Hill Leys were both dead. The trunks of these trees had several neatly formed and equally sized holes sloping down into the trunk at around chest height and below. The light coloured appearance, size and smooth, even sides of the holes indicated that they had been drilled recently. There was a patch of dead grass around the base of the tree extending for approximately 1.5m from the trunk. These signs were considered to be a strong indication that the trees had been poisoned.

## **2.0 The Objection to the Order**

A single objection was received to the order from the owner of 4 Mill Hill Leys on 23<sup>rd</sup> April. An update to this objection was provided by the objector in early August 2019. The additional material includes a report relating to the damage to the objector's property.

Three principle reasons were given for the objection:

- 1) That the council's assessment that the trees with respect to the trees visibility was incorrect
- 2) That one of the interested parties was not informed of the order
- 3) That the reason of expediency was misinformed.

A number of additional points were made including that:

- 1) There is a boundary dispute which raises questions about the ownership of the trees.
- 2) The neighbours have not carried out remedial pruning work
- 3) The trees obscure light and are too close to the adjacent houses.
- 4) The presence of the trees has impacted the objector's mental health
- 5) The trees have caused damage to the complainant's property
- 6) That leaf debris from the trees impose an unacceptable cleaning burden

## **3.0 Response to the Objection**

In response to the principle reasons for objection it is considered that:

- 1) The trees are considered to make a significant contribution to the street scene being visible from several vantage points along Mill Hill Leys. They frame the houses, help to mark the urban edge and therefore the transition to open countryside. The TEMPO assessment is consistent with the objector's assessment with respect to visibility.
- 2) The council went to some lengths and eventually established contact with the owner of the field to the rear after the order was issued. This is a procedural objection which has been resolved and is not relevant to the merits of the order itself.
- 3) The stated reason for the order being made includes the following statement "the immediate protection afforded by a provisional order is considered appropriate to prevent the tree being felled" The objector considers this to be "an inaccurate statement" but herself confirms that several approaches were made to the neighbour about felling the trees. The report of a threat to the trees by the owner of 2 Mill Hill Leys was considered credible.

With respect to the additional points [it is noted that the residents of both neighbouring properties have indicated their support for the TPO, including written correspondence.

- 1) The boundary dispute, , has no more than minor relevance to the assessment of risk to the trees.
- 2) The making of a TPO would not prevent appropriate remedial pruning.
- 3) The configuration of the houses is largely responsible for the light levels to the rear of number 4 Mill Hill Leys as they are roughly L shaped and north west facing. The impact of the trees upon light levels would be similar for neighbouring properties.
- 4) [Whilst acknowledging the complainants reports of ill health it is noted that Mill Hill Leys is a recent development, completed in around 2006. The trees protected by this order are shown to be retained

on landscaping plans and would have been present at the time the complainant purchased her property.

- 5) A report has been provided by the complainant's insurer in relation to damage to a conservatory extension to the rear of the property. This report lacks both objectivity and evidence that the trees in question have caused damage to this conservatory. On this basis it would not represent good practice to accept the findings of this report without question: further commentary is provided below. There is also a risk that removing the trees could cause building damage.
- 6) Leaf debris is a periodic issue.. If accepted as a reason for tree removal it could lead to the wholesale removal of trees from residential areas. There are a variety of methods for preventing the accumulation of leaf litter in gutters which do not involve regular climbing.

A building report by Robert Walker on behalf of Legal and General has been provided in support of the objection. Whilst the broad characterisation of the damage is accepted as reliable the conclusion that trees have caused this damage is not supported by evidence and the report lacks objectivity: This is because:

- The report does not consider alternative explanations for the damage such as the difference in foundation depth between the two parts of the building or faulty drains.
- The report records but does not comment upon the fact that the conservatory has shallow foundations.
- The methods used are not fully explained. This raises a number of questions about the robustness of the investigation and the validity of its conclusions.
- The report concludes that tree removal would be a cost effective solution but has not considered the value of the trees.
- The report is not accompanied by an arboricultural assessment

#### **4.0 Proposed TPO**

The two dead trees remain protected by the provisional order and should the order be confirmed it may be possible to require replacements. The three trees form part of a group that had sufficient amenity value to justify a TPO at the time the provisional order was made. An advantage of protecting the entire group is the ability to carry out rotational pruning and tree replacement to minimise the impact of necessary works. On this basis it is recommended that the Borough of Charnwood (2 and 6 Mill Hill Leys, Wymeswold) Tree Preservation Order 2019 is confirmed unamended.

## Appendix 1: Site Photographs

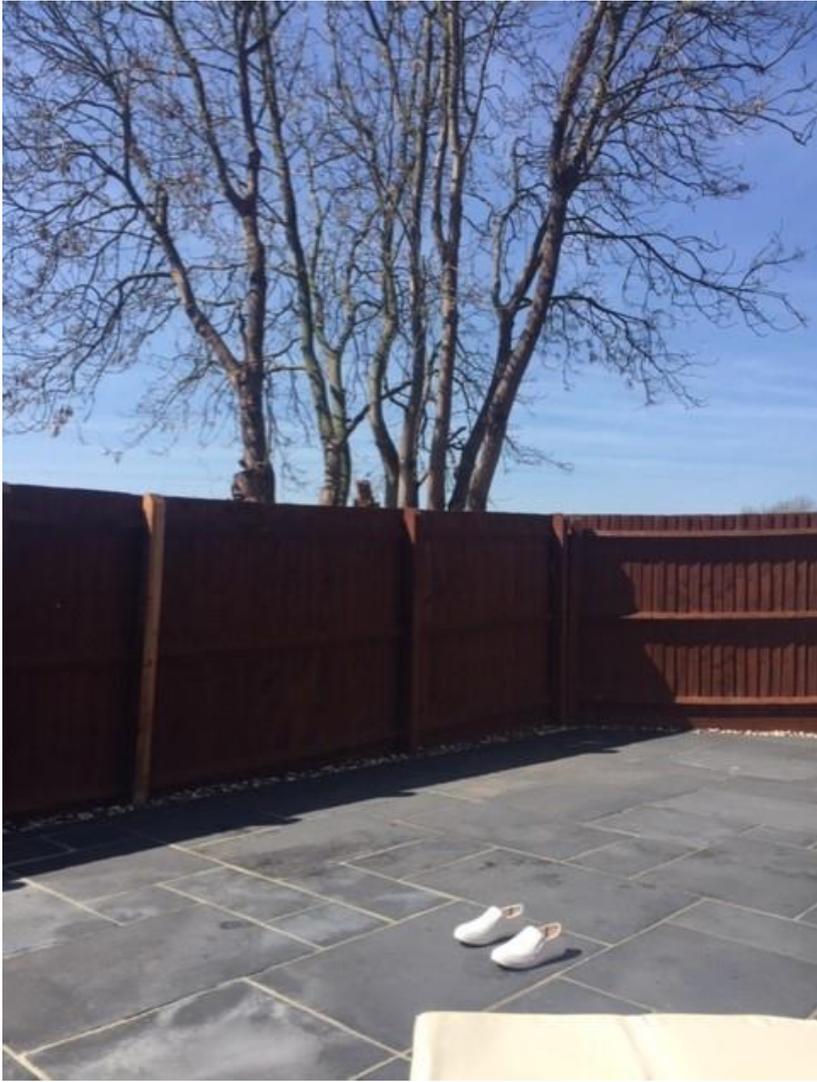
- 1) Aerial image showing the rear of properties along Mill Hill Leys. Group G1 is circled in red.



- 2) View of the tree group (G1) from Mill Hill Leys



3) Garden of number 4 Mill Hill Leys



Appendix 2 Photographs of dead trees taken in late May

