

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.

Contact Officer:

Nola O'Donnell MAgSc Dip (hons) LA CMLI

Senior Landscape Officer

Tel: 01509 634766

Mob.: 07928525501

trees@charnwood.gov.uk

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 P

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

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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

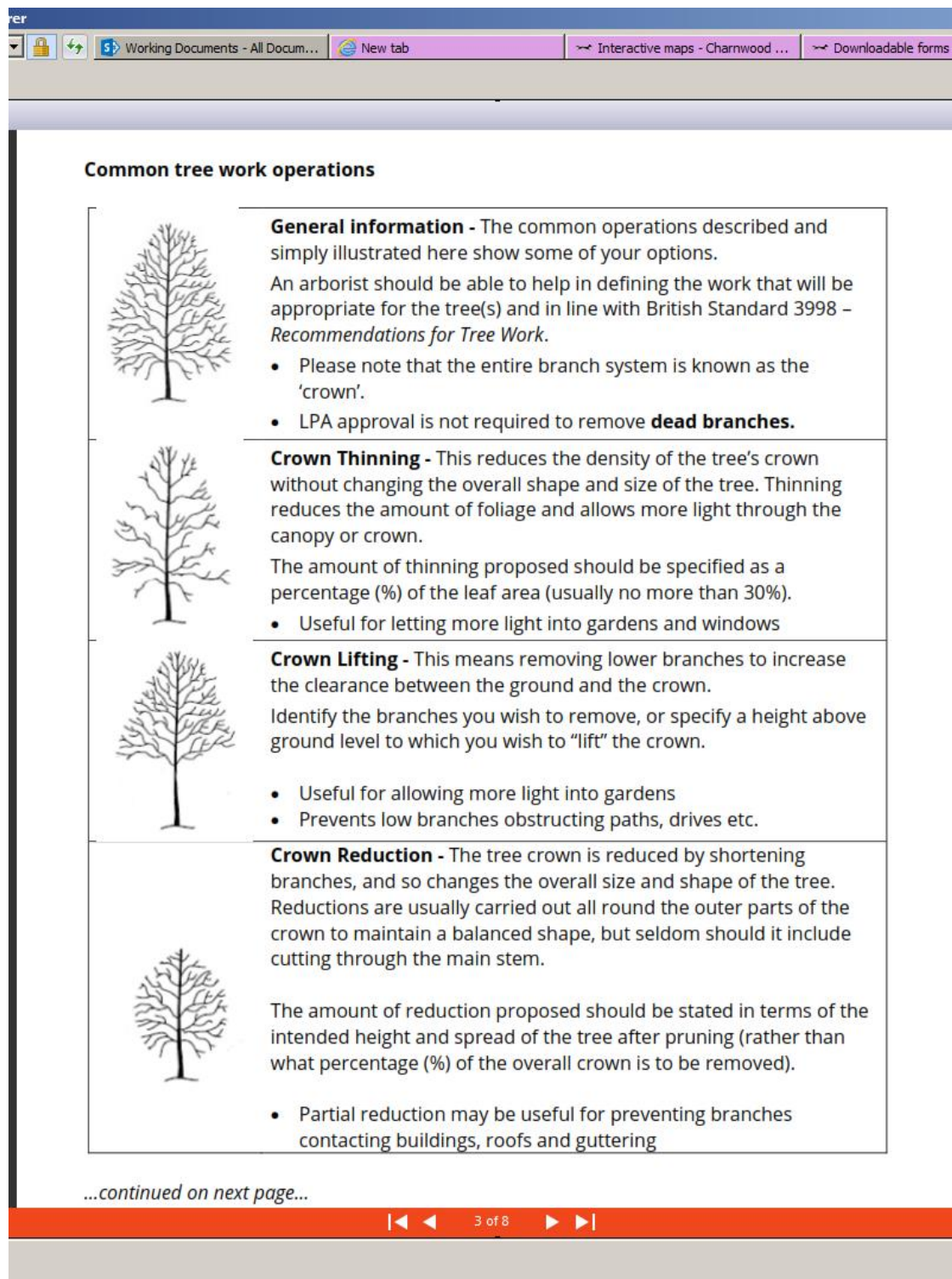
<https://www.isa-arbor.com/>

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 web browser window with the following tabs: 'Working Documents - All Docum...', 'New tab', 'Interactive maps - Charnwood ...', and 'Downloadable forms ...'. The main content area is titled 'Common tree work operations' and contains four sections, each with a tree diagram and descriptive text:

- General information** - The common operations described and simply illustrated here show some of your options. 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 – *Recommendations for Tree Work*.
 - Please note that the entire branch system is known as the 'crown'.
 - LPA approval is not required to remove **dead branches**.
- 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. The amount of thinning proposed should be specified as a percentage (%) of the leaf area (usually no more than 30%).
 - Useful for letting more light into gardens and windows
- Crown Lifting** - This means removing lower branches to increase the clearance between the ground and the crown. Identify the branches you wish to remove, or specify a height above ground level to which you wish to "lift" the crown.
 - Useful for allowing more light into gardens
 - Prevents low branches obstructing paths, drives etc.
- 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. 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).
 - Partial reduction may be useful for preventing branches contacting buildings, roofs and guttering

...continued on next page...

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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/uksi/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>

Nola O'Donnell MAgrSc Dip(hons)LA CMLI Senior Landscape Officer
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