

**APPEALS AND REVIEW COMMITTEE 08 June 2020****BOROUGH OF CHARNWOOD (LADY JANE PARK, BRADGATE ROAD, NEWTOWN LINFORD) TREE PRESERVATION ORDER 2019 - PROVISIONAL****1.0 Introduction****1.1 Background**

A S211 Notice P/19/2566/2 was received from a householder for crown reduction to a substantial oak situated in the southwestern corner of the adjacent site. The site is also the subject of a planning application P/19/2119/2 for the erection of 8 dwellings which was supported by a BS 5837:2012 Arboricultural survey and impact assessment ( see appendix B). The S211 Notice was also supported by reference to the development application and its tree report. The proposed crown reduction is considered excessive.

**1.2 The Site**

The site is a former mobile home park for which conditional consent for the erection of 8 dwellings has been granted. The rear gardens of Stanford Rise abuts its northern boundary.

**1.3 Condition of the trees**

The tree referenced in the S211 Notice is identified in the above planning application tree survey as a mature tall established oak T1, of notable girth and classed as a category A2 tree. The tree is described as of moderate condition displaying good vitality though the presence of a bracket fungus is noted in the buttress region. The survey notes that there have been numerous branch reductions which have left large wounds. The application survey erroneously used the now defunct 'DBH' (DBH means diameter at breast height, notionally regarded 1.2m. This is now replaced by 1.5m.) Notwithstanding a stem diameter of 1.5m was recorded. This should give a girth measure in region of 4.0-4.7m approx. range strongly suggesting the tree is a veteran if not ancient. The recommended management for a tree with this type of fungus is to remove any dieback back to healthy live growth and monitor.

Crown reduction is only recommended if extensive decay cavities are found. None have been reported. It is reasonable to conclude that the tree has been over-pruned in the past and badly managed considering its local importance. It is important to ensure that from this point onward it is properly managed.

The ash tree, T2 is a mature tree which has been adversely worked in the past leading to stress and dieback. The tree is still worthy of formal protection having been classed as retention category C2.

The oak, T3 is a semi-mature multi-stemmed tree in good condition. The tree has been previously subjected to both crown reduction and crown lifting. It is classed as retention category B2.

The proposed development is highly likely to be detrimental to the future growth and development of these trees and the TPO trees which lie off site to the east. The impact assessment fails to take into account the need for adequate clearance space between dwellings and tree to allow for usable garden space and to allow for future growth in terms of crown and root spread.

2.0 The Objection to the Order- Paul Butler of The Oaks, 4 Stamford Rise, Newtown Linford.

An objection to the Order were received

The objection asserts that:

1. The trees are overhanging the property and causing a potential danger.
2. In December 2019 I did submit a request to the council asking for permission to prune back this tree and in my opinion the council appear to be dealing with the TPO rather than my reasonable request to prune back the dangerously overhanging branches.

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

3.0 Response to the Objections

1. The oak tree overhangs the adjacent plot as well as the dwelling because the dwelling was built well within the crown spread of the tree. Pruning the tree to remove the overhang would lead to creation of serious wounds which would contribute to the decline and health of the tree and limit its safe life expectancy. The tree is not currently assessed as 'dangerous' as evidenced by the arboricultural report ( Appendix B) to which the S211 Notice referred.
2. The objector misunderstands the purpose of the S211 Notice process. It is about assessing the tree with regard to placing under formal protection of a Tree Preservation Order. The evidence of the referenced arboricultural report is that it does merit TPO. 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. The Order does not prohibit reasonable management but rather requires that a formal application be made. Anyone- land owners, owners 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 C). 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.

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 adverse and potentially disfiguring works to the detriment of the

trees amenity value and wellbeing. The committee is therefore recommended to confirm the Order without modification.

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## APPENDICES

APPENDIX A - PHOTOGRAPHS



T1 oak as seen from Stanford Rise

## APPENDIX B

### Arboricultural Report for P/19/



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B21A0050569DEB32.

Tree No	Species	Scientific Name	Age Class	Condition	Comments	Contributing Years	Category	Recommendations	Height (m)	Canopy Spread (m)	Ground Canopy Height	DBH (m)	RPA (m <sup>2</sup> )	RP Radius
1	English Oak	<i>Quercus robur</i>	Mature	Moderate	Mature, tall and established oak with a notable stem girth. Tree appears to display good vitality although several brackets of <i>Pseudoinotus dryadeus</i> are present in the buttress regions of the stem - the brackets have died back and are corky in texture. The lower to middle portions of the crown and some regions of the upper crown have been subject to numerous branch reductions works mainly at the E (over the Survey Site) and the W (over an adjacent residential dwelling). Several large pruning wounds/stubs with bark tears are present on the lower stem E + S facing. The wounds have partially occluded and exposed case-hardened wood is present as well as some regions of softer, decaying wood - there is no obvious evidence of cavities.	40+	A2	Undertake a further Visual Tree Inspection in the late-spring/summer and an invasive inspection with a micro-drill to determine the condition of roost and the extent of decay.	21.20	N8.5 S8.5 E6.5 W8	8.3	1.50	1017.88	15.00 (18.00)
2	Ash	<i>Fraxinus excelsior</i>	Mature	Poor	Tree is located on or just off the site boundary and surrounded by dense scrub with no access to the stem area. Tree has been thinned/crown lifted in the past. Die-back is evident in the upper crown with several dead secondary/tertiary branches. X1 large upward pointing limb torn-out at 7.8m, dead young re-growth evident from distal end, ~1m below which is a large cavity created due to lateral branch failure.	10+	C2	Crown reduction/crown clean is recommended as well as the removal of dead/dysfunctional branches - note these features may have the potential to support roosting bats/nesting birds.	15.50	N6 S7.5 E7.5 W7.5	4	0.70	221.67	8.40

### T1 Oak is classed as retention category A2.

## 5.3 Identified Tree Species and Characteristics

### 5.3.1 Tree T1

Tree T1 is located on the Survey Site boundary and is a tall, fully mature and established pedunculate oak (*Quercus robur*) with a stem circumference of nearly 5m. The tree is likely to be approximately 150 years old.

T1 appeared to display good vitality although several brackets of the wood-decaying fungi, likely to be *Pseudoinotus dryadeus*, were identified in the buttress regions of the stem - the brackets had died back and were corky in texture.

The lower to middle portions of the crown and some regions of the upper crown have been subject to numerous branch reduction works. Several large pruning wounds/stubs with bark tears were identified on the lower stem. These wounds had partially occluded and exposed case-hardened wood was present as well as some regions of softer, decaying wood - there was no obvious evidence of cavities at the time of survey.

Overall, T1 was identified as being in moderate condition at the time of survey.



## APPENDIX C

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**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.

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

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**8. Trees - Additional Information**

3 of 4

## Section 8 Additional Information

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

The screenshot shows a web browser window displaying a form titled "8. Trees - Additional Information". The form is contained within a frame and includes the following text:

**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.

Below the text is a large empty rectangular box for providing details.

**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 white text that says "3 of 4".

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

The Arboricultural Association

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

The Institute of Chartered Foresters

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

The International Society of Arboriculture

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

APPENDIX D

Senior Landscape Officer Objection to P/19/ 2119/2

CHARNWOOD BOROUGH COUNCIL –CONSERVATION & LANDSCAPE

APPLICATION NUMBER: P/19/2119/2

LOCATION Lady Jane Mobile Home Park, Bradgate Road, Newtown Linford

PROPOSAL Erection of x7 bungalows and x1 replacement dwelling at 532  
Bradgate Road

DATE: 9 January 2020

FROM: Nola O'Donnell Senior Landscape Officer

TO: Lewis Marshall Principal Planning Officer

RECOMMENDATION: **OBJECTION TO LAYOUT**

COMMENT/REASON:

This is not an objection to the principle of development but to the density and layout of the proposal. The layout does not properly take the trees on site nor the trees adjacent to the site properly into account. The design fails to properly consider all aspects for tree retention and the avoidance of harm or conflict as set out in the BS 5837:2012.

The most significant tree is a mature tall established oak T1, of notable girth and classed as a category A2 tree. The tree is described as of moderate condition displaying good vitality though the presence of a bracket fungus is noted in the buttress region. The survey notes that there have been numerous branch reductions which have left large wounds. The application arboricultural survey erroneously used the now defunct 'DBH' instead of BS5837:2012 Annex C. Notwithstanding a stem diameter of 1.5m was recorded. This should give a girth measure in region of 4.0-4.7m approx. range strongly suggesting the tree is a locally notable tree if not veteran. The recommended management for a tree with this type of fungus is to remove any dieback back to healthy live growth and monitor.

The ash tree, T2 is a mature tree which has been adversely worked in the past leading to stress and dieback. The tree has been classed as retention category C2 indicating it is a tree worthy of retention for its great amenity value.

The oak, T3 is a semi-mature multi-stemmed tree in good condition. The tree has been previously subjected to both crown reduction and crown lifting. It is classed as retention category B2.

The stems of T4 and T5 are off site but the crown and roots are in reality features of the site in that they occupy subterranean and aerial volume of the site. They are oak

and are of considerable value being classified as A2 and already placed under TPO.

The statement in the arboriculture report Para 6.2.1 that “*the scheme layout will not therefore directly affect the trees....*” is incorrect. The layout would act as a constraint on the trees. The BS 5837 throughout, and in particular, para 5.3.4 advises on the attributes which should be considered. In para 5.3.4 d it states:

*“The relationship of buildings to large trees can cause apprehension to occupiers or users of nearby buildings or spaces, resulting in pressure for the removal of the trees. Buildings and other structures should be sited allowing adequate space for a tree’s natural development, with due consideration given to its predicted height and canopy spread. However, this does not mean that trees should not be retained within any particular distance of a structure...”*

While the layout give clearance for RPAs from a construction point of view for the trees, it does not accommodate future growth of the trees in terms of root and crown spread and is highly likely to be detrimental to the future growth and development. The impact assessment fails to take into account the need for adequate spatial clearance from dwellings and for functional usable garden space outside of the crown spread. The likely consequence of this is that future residents would seek to constrain the trees and subject them to adverse pruning regimes.” It is clear that this has been ignored.

A decision has been made to create a TPO for the protection of T1, T2 and T3 in accordance with the statutory duty set out in Section 197 of the Town and Country Planning Act. If further advice with comprehensive detail is required, please do not hesitate to contact me.

## Section 8 Additional Information

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\\_england\\_en.pdf](https://ecab.planningportal.co.uk/uploads/appPDF/Help031_england_en.pdf)