

REPORT OF THE HEAD OF PLANNING AND REGENERATION

APPEALS AND REVIEW COMMITTEE, 17 November 2020

BOROUGH OF CHARNWOOD (The Vicarage 52 Main Street, Cossington) TREE PRESERVATION ORDER 2020 - PROVISIONAL

1.0 Introduction

1.1 Background

A S211 Notice P/20/1174/2 was received seeking to undertake a range of works including inter alia the removal of understory trees and crown reduction of intermediate sized trees.

The vicarage gardens form part of the approach to the Church of all Saints, a grade II* listed building. It is considered that the tree belt along the southern boundary of the property is an important landscape feature for the setting of the church. In all, 18 of 31 trees or tall woody shrubs are marked for removal. In particular the removal of 3 yews and all the holly is considered adverse and unwarranted. In addition to this further works is proposed to reduce the remaining yew. Collectively the amount of works proposed would have a cumulative effect on this characteristic of the understory layer. It should be borne in mind that yew and holly tree have been associated with churches and their surrounding going back to ancient times.

The purpose of the TPO would be to retain the integrity of the tree belt which consists of high canopy specimen tree and understory. Normally understory consisted of three or more layers of vegetation- intermediate layer of medium to small trees, a lower shrub layer and ground herbage. The herbage layer has largely already been stripped out. The programme of works did not include specific plans to replant yew or holly trees.

Some of the works described is removal of dead wood. This is exempt works which may be carried out regardless of TPO status and as notice of this has already been given under the S211 no further notice is required.

1.2 The Site

The site is the garden of domestic dwelling rear garden historically associated with the adjacent church of All Saints.

1.3 Condition of the trees

The trees are in fair to good condition. The Order covers two individual trees Sycamore and Maple and a group G1 consisting of 2 Sycamore 8 Yew 1 Pine 1 Oak 5 Holly 2 Redwood 2 Hornbeam and 1 Hazel.

They were assessed for a range of attributes and all meet the requirement to merit protection on amenity value

2.0 The Objections to the Order

An objection to the Order was received by email.

Objection - Emma Swain

The Objection is mainly based on a lack of understanding of the purpose of the S211 Notice process.

The objection asserts that:

1. Permission for work cannot be 'granted' at the same time.
2. That the imposition of a TPO prevents design and planning of their garden

The objection further implicitly asserts that:

Appropriate works could not be carried out. It states:

I hope it's clear that my objection isn't necessarily an objection as such to the TPOs but to the non grant of permission for the work to go ahead whilst the TPOs are being administered. Although as we fall under conservation TPOs do seem unnecessary as we have to conform to applying for permission for work anyway.
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No other written representations have been made in relation to the Order.

3.0 Response to the Objection

The only effective instrument for the protection for trees is the serving of a TPO. It is possible for owners of TPO trees to apply for works to their trees.

The S211 Notice process has one prime purpose that is for the Authority to consider placing tree in the said Notice under TPO. There are two decision option:

- To create a TPO which prevent works to the tree covered by the TPO. This implicitly allows works to the tree not covered by the Order.
- To not create a TPO which permits the described works of the notice.

The Order does not prevent or impede in any way works which are appropriate necessary or proportionate. Indeed tree owners are encouraged to ensure they manage their trees. This Authority has undertaken the correct course of action to consider the amenity value of the tree and to create a TPO to protect them.

1. The Order allows for the submission of TPO Tree Works Application. For tree which were covered by the original S211 Notice but not covered by the Order the described works may be carried out. The Order only prevents the described works to the trees listed in the Order.
2. The Order does not prevent design and planning of their garden

4.0 Conclusion

Removing the Order by failing to confirm it at this appeal and review committee would mean the trees would be subject to felling with the loss of their amenity to the area. The only way to secure the trees presence and subsequent replacement is via confirming the Order.

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

Contact Officer:

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APPENDIX A - PHOTOGRAPHS



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

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

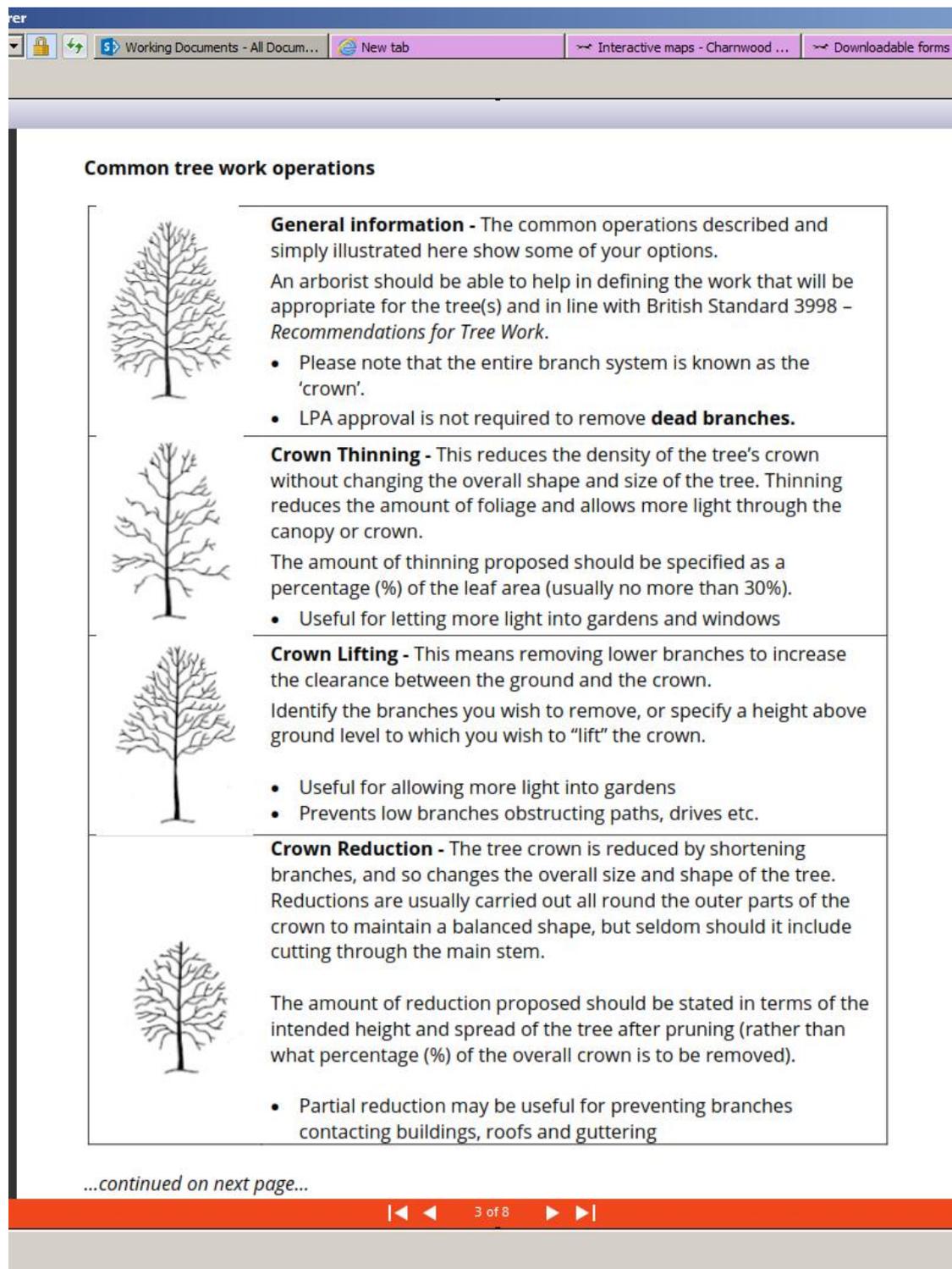
<https://www.isa-arbor.com/>

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 image is a screenshot of a PDF document titled "Common tree work operations". The document is displayed in a browser window with several tabs open: "Working Documents - All Docum...", "New tab", "Interactive maps - Charnwood ...", and "Downloadable forms -". The main content of the PDF is organized into four sections, each featuring a diagram of a tree and a corresponding text block. The first section, "General information", includes a diagram of a full tree and text explaining that the entire branch system is known as the 'crown' and that LPA approval is not required to remove dead branches. The second section, "Crown Thinning", shows a tree with some branches removed and explains that this operation reduces the density of the crown without changing the overall shape, with a note that thinning should be specified as a percentage of leaf area (usually no more than 30%). The third section, "Crown Lifting", depicts a tree with its lower branches removed and states that this means removing lower branches to increase clearance between the ground and the crown. The fourth section, "Crown Reduction", shows a tree with its outer branches shortened and explains that this operation changes the overall size and shape of the tree. At the bottom of the page, there is a red navigation bar with a page number "3 of 8" and navigation arrows. The text "...continued on next page..." is visible at the bottom left of the document content.

Common tree work operations

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/ukxi/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/uksi/2012/605/regulation/14/made>

TPO guidance

<https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas>

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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