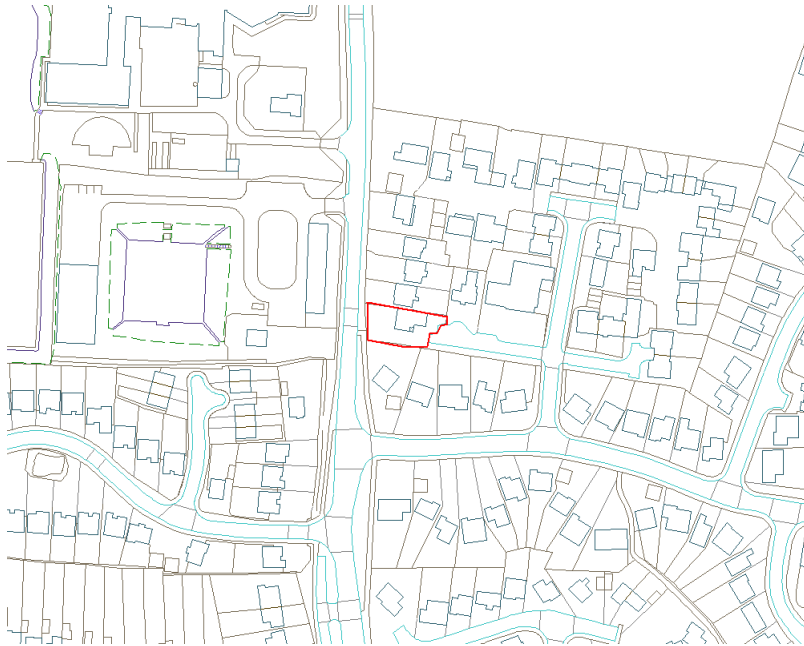


Reference: 10/00279TPO
Date Submitted: 13.4.10
Applicant: Mr J M Playfer
Location: 1 Faldo Drive, Melton Mowbray
Proposal: Removal of 1 Lime Tree



Introduction:-

The application site is a property bordering Scalford Road and Faldo Drive and is covered by a Tree Preservation Order 151/900/26. The Tree Preservation Order is an Area Order which was placed on the site of the former Framland Hospital in 1993 before the new housing estate was built. The lime tree in question is one of several limes in a linear group fronting Scalford Road from North to South and from Scalford Road to Faldo Drive from East to West.

The application is for the removal of one mature lime tree within the grounds of 1 Faldo Drive due to the applicant's concerns over its perceived implication as a contributory factor in subsidence damage related to clay shrinkage.

The application is placed before Development Committee due to this application to remove the tree (10/00279/TPO) being deferred from Development Committee on the 1st July 2010 to allow for further technical advice to be submitted. A subsequent application 12/00380/TPO has been presented to Development Committee and refused on the 3rd August 2012.

Relevant History:-

- 99/00440/TPO - Lopping of 3 lime trees – **permitted – 01.09.1999**
- 00/00489/TPO - Crown thin 20% and crown lift 1 lime tree – **permitted – 29.8.2000**
- 06/00496/TPO - Crown thin 10% and crown clean 4 lime trees – **permitted – 21.7.2006**
- 07/00353/TPO - Cutting down and killing roots of 2 lime trees – **refused – 22.5.2007**
- 07/00837/TPO - Root pruning of 2 lime trees – **permitted – 24.10.2007**
- 09/00869/TPO - Removal of 1 lime tree – **refused – 18.01.2010**

10/00279/TPO – Removal of 1 lime tree – deferred from Development Committee 1st July 2010 to enable the applicant to provide further technical advice. In light of the submission of a subsequent application the applicant was requested to withdraw the existing application, this request was **declined and subsequent information provided on the 10th October 2012.**

12/00380/TPO – Removal of 1 lime tree – **refused – 3.8.12**, on the grounds that “the Lime tree is in a healthy condition and has a significant amenity value in this location as part of a linear group of trees. The proposal would result in the loss of a tree which is protected by a tree preservation order. The tree is considered to be healthy and make a significant contribution to the amenity of the area and there are no circumstances which have altered since the Order was originally served that justify its removal. The removal of the tree would disrupt the linear feature linking the limes on either side and justification is not considered sufficient to warrant its removal. Insufficient information has been submitted with the application in order to justify its removal.”

Policies & Guidance:-

DETR Tree Preservation Order: A Guide to the Law and Good Practice states that in considering an application for the removal of a tree protected by a TPO the Local Planning Authority are advised:

- 1) to assess the amenity value of the tree or woodland and the likely impact of the proposal on the amenity of the area, and
- 2) in the light of their assessment at (1) above, to consider whether or not the proposal is justified, having regard to the reasons put forward in support of it. They are advised also to consider whether any loss or damage is likely to arise if consent is refused or granted subject to conditions.

Melton Local Plan (saved policies)

The site is located within the Town Envelope of Melton Mowbray as defined within the saved Melton Local Plan. Any tree covered by a Tree Preservation Order cannot be felled, lopped, topped or uprooted without the consent of the Council.

Consultations:-

Consultation reply	Assessment of Head of Regulatory Services
<p>Leicestershire County Council Assistant Arboricultural and Forestry Officer:</p> <p>The tree forms part of an avenue of lime trees.</p> <p>The amenity value of the tree and the line of lime trees would be the greater for retaining all of the trees and maintaining them in the same way i.e. replicate any tree works carried out to all of the trees in the line, This would allow for greater continuity and prolong the safe useful life expectancy of the trees. Given that the tree is in a healthy condition, that it is part of a linear group of trees and that the overall amenity value of the group would diminish if it was to be removed.</p> <p>On carrying out an onsite inspection, from ground level only, it is confirmed that the tree is at maturity and currently exhibits signs of good health and vitality with highly vigorous canopy; however, there are some minor dead branches within the canopy which is to be expected with trees of this species, size and age. The tree is in close proximity to the house (approximately 3m from building to trunk) although only a small proportion of the canopy is</p>	<p>The application has been supported with an arboricultural survey and an addendum technical report, received on the 10th October 2012 The current condition of the tree has been thoroughly assessed with regard to its health, vigour and amenity value and the tree is considered to be healthy, vital and of having significant amenity value to neighbouring properties and the streetscene.</p> <p>The advice from the Arboricultural Officer is that the report does contain level monitoring but there is concern that this could be reflective of weather conditions and is inconclusive in terms of the impact of the tree. Longer term monitoring is required to establish is the tree is responsible, or indeed whether the land level will recover.</p> <p>Therefore it is considered that insufficient justification has been submitted with the application in order to justify its removal.</p>

directly over the property, there is also some evidence of minor distortion to the block paving from the tree roots of both the tree mentioned and a lime tree that is adjacent. A branch was shed from the tree in November 2009, falling adjacent to the house, the remaining part of the branch that is still attached to the tree shows symptoms of a significant structural fault at the point of failure, possibly as a result of previous tree works in the canopy and a pruning wound at the fracture point.

Over the last 18 months Leicestershire has experienced some excessively dry weather patterns; should this pattern continue over the coming months and years any vegetation related subsidence is likely to increase in severity. If these weather patterns cease and ground water levels are replenished then the potential for subsidence is also likely to decrease.

Given the age and size of the trees (i.e. they are at their full mature size) it is likely that they are currently exerting their full influence on soil moisture levels. It is also likely that the trees have changed very little in size from the date of construction. It would, therefore, be reasonable to assume that the trees' influence on soil moisture levels will not have increased excessively over the last 15-20 years.

NHBC chapter 4.2 categorises lime species as a moderate water demanding tree.

Results from soil testing would indicate that there is good reason to consider the soil to have a moderate to high potential for volume change, due to moisture extraction. However only measurements from 1.7m – 2.75m in depth have been published in the report. Soil moisture at this depth may not be considered representative of the soil moisture content between ground level and 1.6 m.

The lime trees are of an age that is far greater than that of the adjacent property (i.e. the trees are approximately 90-100 years old, the property was constructed in 1994). Using guidance laid out in NHBC chapter 4.2 the foundations for a new property being constructed: within 3m of a lime tree; on a soil with a moderate potential for volume change, should be approximately 1.75 metres deep. The same construction on a soil with a high potential for volume change should have foundations of approximately 2.1 metres in depth. The report submitted suggests that the actual foundations of 1 Faldo Drive are only 1.4 metres in depth.

Within the Arboriculture report submitted it has been suggested that details of level monitoring, to establish the extent of and distribution of vertical

<p>movement, should be submitted with the application to fell the tree. If level monitoring is not possible then monitoring of the extent of cracking within the property should be submitted. The results of these surveys have not been submitted with the application.</p> <p>Level monitoring has been conducted on the property between January 2011 and November 2011. Leicestershire has experienced successive seasons with lower than average rainfall, especially during the period of level monitoring. However, between April 2012 and July 2012 the average rainfall expected for this area has been exceeded.</p> <p>As yet no further details of level monitoring have been submitted for the period between November 2011 and the present date. Further to this, no discussion has been made, by a structural engineer, as to the level or category of damage according to BRE digest 251. Unfortunately without these assessments it is not practical to comment further on the influence of the lime trees on Faldo Drive.</p> <p>The current cost of repairs has been estimated at £3,000 if the tree is removed or £30,000 if it is retained. Should the removal of the tree fail to rectify the subsidence, then it would be reasonable to expect a further request for tree removal of the two lime trees adjacent to T1.</p> <p>Whilst the lime tree subject to the recent TPO application is not entirely visible from Scalford Road or Faldo Drive it does form an intrinsic part of an avenue of lime trees that line both Scalford road and Faldo Drive. The trees are significantly older than the properties on Faldo Drive and are likely to have been retained as part of planning permission during the development of the estate. An avenue of trees is always greater for having a greater number of constituent parts. The removal of one lime tree in the centre of the avenue will have the effect of deconstructing the avenue. Should the tree be removed and the subsidence continues to manifest there is the potential that a request will be made for the removal of more trees in the avenue.</p> <p>In conclusion the tree officer stated that level monitoring should be conducted over a number of months and seasons in order to ascertain where movement is attributable to seasonal variation of vegetation related subsidence.</p>	
<p>Leicestershire County Council Ecology – It is a criminal offence to damage or destroy a bat roost. Therefore, if the tree is mature and has hollow cavities and / or is covered with ivy, or has suitable places in which bats might roost, we recommend that it be surveyed for bats before any work is carried out to the tree. All birds, their nests and eggs are protected by the Wildlife and Countryside</p>	<p>Noted. This can be an informative on the decision should it be permitted</p>

<p>Act. We recommend that work to trees is done outside the bird-nesting season - i.e between the end of August and beginning March. If work to the tree is to be undertaken during the bird breeding season, we recommend that a suitably qualified ecologist surveys the tree for nesting birds. If nesting birds are present, work must be postponed until the young have left the nest.</p>	
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Representations: Five letters of supported were submitted with the application. A site notice was posted on 20th May 2010 but no additional representations from neighbouring properties were received.

<p>Neighbouring Properties comments received as part of the submitted application</p> <p>Perceived problems with subsidence at 1 Clark Drive</p> <p>General support for the applicant with regard to perceived health and safety problems with the tree</p>	<p>The application has not been submitted with evidence to support the perceived subsidence problems at number 1 Clark Drive. The Arboriculturalist at Leicestershire County Council on his site inspection did not perceive there to be a risk of subsidence.</p> <p>The stated health and safety problems with the tree have been addressed by the Leicestershire County Council's Assistant Arboricultural and Forestry Officer.</p>
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Other material considerations (not raised through consultation or representation)

Consideration	Assessment of Head of Regulatory Services
<p>History:</p>	<p>This site has been subject to numerous applications including two previous applications to remove the lime tree. An application in 2009 for the removal of the lime tree was refused as the tree is in a healthy condition and has a significant amenity value in this location as part of a linear group of trees. The proposal would result in the loss of a tree which is protected by a tree preservation order. The tree is considered to be healthy and make a significant contribution to the amenity of the area and there are no circumstances which have altered since the Order was originally served that justify its removal.</p> <p>The application for the removal of tree in 2012 was refused on the grounds of insufficient information.</p> <p>This application was submitted in 2010 for the removal of the lime tree is still current as the applicant has declined to withdraw the application following the Development Committee's deferment to request further information in July 2011, and subsequent submission of additional information in October 2012.</p> <p>The previous applications were submitted on the grounds of perceived dangers from falling branches and disruption, through root growth, to the block paving. This application has been submitted with supporting evidence for the felling of the Lime tree on the grounds that tree has been a contributory</p>

	factor in subsidence damage relating to clay shrinkage. An assessment of the information is detailed above.
<p>Reason for submission of application:</p> <p>The applicant has stated that in November 2009 during a period of high winds, a substantial bough was ripped from the subject tree. It fell on the path leading to the back door and rear of the house, missing the house itself by a few centimetres. If it had hit the house it would almost certainly have caused damage. If it had fallen on a person, using the pathway, it would certainly have injured that person, probably seriously, possibly fatally. The tree is situated just 3.5 metres from the house and there appears to be no effective way of eliminating this aerial hazard other than the removal of the tree.</p> <p>The U.K.Meteorological Office has predicted that one of the likely consequences of global warming will be an increase in the number and severity of gales in the U.K. Further tree damage can, therefore, be expected.</p> <p>A second hazard has arisen in the past with root growth buckling the blockwork driveway. A previous application 07/00353/TPO was made on 28th March 2007 in relation to this secondary hazard. An alternative approach to resolving this problem (which did not necessitate the felling of any trees) was proposed by the Leicestershire County assistant arboricultural officer Mr. Julian Simpson which proved practicable but there are certain disadvantages to this implemented approach which the Council appears to have overlooked both then and in the footnote appended to their recent refusal. There is no mention of the hazard issues which led to the application, rejection being based solely on 'amenity' considerations. The wording of the refusal is repetitious and inaccurate strongly suggesting that it was hurriedly prepared and not independently checked.</p> <p>A question was put to the council regarding the absence of any reference to the hazard issues. The reply received stated "<i>The reason the Council refused consent to remove the tree was because it was not persuaded that it posed a significant danger. It did not reach this position lightly nor subjectively, but did so only after receiving expert</i></p>	<p>The tree has been inspected by the County Council Arboricultural officer who has stated that there are some minor dead branches within the canopy. However, this is to be expected with trees of this species, size and age. The tree is in close proximity to the house (approximately 3m from building to trunk) although only a small proportion of the canopy is directly over the property, there is also some evidence of minor distortion to the block paving from the tree roots of both the tree mentioned and a lime tree that is adjacent. A branch was shed from the tree in November 2009, falling adjacent to the house, the remaining part of the branch that is still attached to the tree shows symptoms of a significant structural fault at the point of failure, possibly as a result of previous tree works in the canopy and a pruning wound at the fracture point.</p> <p>It is considered by the Arboricultural Officer that if the tree is maintained it would allow for greater continuity and prolong the safe useful life expectancy of the trees. The tree is considered to be in a healthy condition. It should be noted that there has been no specialist structural, engineering or arboriculture reports submitted in support of this application to demonstrate that the tree is <u>not</u> in a healthy condition.</p> <p>It has been noted by the Arboricultural Officer that there is some evidence of minor distortion to the block paving from the tree roots of both the tree mentioned and a lime tree that is adjacent. Discussion has taken place with regards to root barriers and removal of a substantial part of the root system. However, an arboricultural report states that they would not recommend this procedure for this tree as there would be large scale detrimental damage to the root system in order to install the barrier. The damage would manifest as branch dieback or loss of branches within the canopy as the tree tries to react to the loss of roots.</p> <p>A more appropriate choice of development would be to use geo-textiles or geo-web, which can be laid over the soil and root system of the tree and back filled for stability with no fines gravel, without the need for excavation. This layer is then used as a load bearing sub base on which a new driveway can be constructed.</p> <p>The use of geo-textiles will also restrict the need for constant cyclical repair to the driveway as the tree roots will have less contact with the paving/driveway due to the design of the geo-</p>

arboriculture advice on the health of the tree and the danger that it poses.”

This reply does not explain how a decision was reached that the fall of a substantial bough from some height onto a pathway in regular use is not hazardous. A request was then made for a copy of the report prepared by the County assistant arboricultural officer Mr. Andy Allen to ascertain the reasons he gave for reaching his conclusions as to the safety of the tree.

In this report, Mr Allen clearly states. *“I didn’t inspect the tree on health and safety grounds.”* This directly contradicts the Council’s statement.

In the responses to both planning applications referred to above, no reference has been made to exclusion zones. It is customary practice for the planning departments of most local authorities to establish the exclusion zone for trees in the proximity of proposed new buildings. Permission for new construction is only given if the tree exclusion zones are not breached. Presumably these zones are determined in order to prevent unsatisfactory, unwise or unsafe construction. Though they are not strictly relevant to existing properties, it must still be considered unsatisfactory, unwise or unsafe for existing buildings to be within tree exclusion zones. The exclusion factor is therefore an important consideration to be taken into account when an application is made for a tree to be felled. The subject tree at 3.5 metres from the house is well within the exclusion zone that would be set for a large mature lime tree.

The problem of root growth was resolved in 2007 by lifting the affected sections of the block driveway and cutting out the offending roots. Mr Simpson (Leicestershire County assistant arboricultural officer) confirmed that this operation would not affect the stability of the tree, but he also pointed out that *“Subsequent new root growth and possible expansion of other roots could cause a repeat of the problem in future.”* . To prevent the need and expense of recurrent driveway repairs a root barrier would have to be installed. Mr Simpson states that *“an assessment could be made regarding whether some form of root barrier is feasible to deflect root re-growth. This method would reduce the likelihood of damage recurring but could not be guaranteed 100% effective as large roots that are essential to tree stability would need to be preserved.”*

In the more recent report by Mr A Allen the following statement appears *“The immediate issue of the roots pushing up the block paving is a problem and will become worse, if left. I would suggest that the immediate area around the base of the tree be exposed and a course of root pruning*

textiles.

The cost of using geo-textiles to deal with the tree roots should be thoroughly considered before putting forward the cost of maintenance and repair as a justification for the loss of the tree.

Again it should be noted that no evidence of the cost or the damage of the root system has been put forward with the application from a specialist structural engineer or arboricultural advisor to justify the loss of the tree.

<p><i>applied. This will have to be done on a cyclic programme and is very inconvenient and has financial implications. The long term would be to install a root barrier at the base of the tree but again this will have detrimental effects, as the anchorage roots of the tree will have to be severed, to accommodate the barrier initially.”</i></p> <p>There is no reference by the Council to the potential difficulties or costs clearly identified by the two county officers.</p>	
<p>Impact on Streetscene:</p> <p>The applicant has stated in his supporting evidence that it is surely self-evident that any possible question of hazard must take precedence over considerations of amenity. However there are some points to be made regarding the amenity of the trees. Much weight is placed on the significance of the linearity of the trees. It should be made clear that there are just 6 trees flanking the westerly section of Faldo Drive on the South side. These six trees are not equidistant and removal of the subject tree will not disrupt their linearity. The existing six trees can only be viewed in their entirety from a vantage point within parts of Faldo Drive itself. From any other viewpoint the trees are partly masked by buildings. The trees have been engulfed by progressive residential developments sanctioned by Council planners without any regard to the landscape value of the trees.</p> <p>The terms ‘amenity’ and ‘significant’ are subjective and unquantified.</p> <p>Most of the property owners who have to live in close proximity to the trees would view them as liabilities rather than assets. Mr Allen introduces his report as follows <i>“I would imagine that this location is quite dark and is subject to various nuisance related issues, such as;- Leaf fall, Slippery ground conditions, damp, minor structural damage, intimidation of the heights of the surrounding trees etc etc.”</i>.</p> <p>The Council should recognize that these introductory words chosen by Mr Allen purport to describe an ‘amenity’!</p>	<p>The tree is visually prominent and forms an intrinsic part of the streetscene.</p> <p>As the tree forms an intrinsic part of the streetscene and is suitable in its surroundings, the tree is therefore considered worthy of preservation in accordance with the criteria in “Tree Preservation Orders: A Guide to the Law and Good Practice”. The tree is considered to have a high amenity value to the streetscene and it is not considered that sufficient evidence has been submitted with the application to justify the removal of the tree.</p>

Conclusion

It is considered that the Lime tree which is the subject of this application is in a healthy condition and has a significant amenity value in this location as part of a linear group of trees. The proposal would result in the loss of a tree which is protected by a Tree Preservation Order. The tree is considered to be healthy and make a significant contribution to the amenity of the area and there are no circumstances which have altered since the Preservation Order was originally served that justify its removal. The removal of the tree would disrupt the linear feature linking the limes on either side. Whilst evidence has been submitted with the application it is not considered that the Authority has the relevant information to determine the application and the application is recommended for refusal

RECOMMENDATION: - REFUSE

1. In the opinion of the Local Planning Authority the Lime tree which is the subject of this application is in a healthy condition and has a significant amenity value in this location as part of a linear group of trees. The proposal would result in the loss of a tree which is protected by a tree preservation order. The tree is considered to be healthy and make a significant contribution to the amenity of the area and there are no circumstances which have altered since the Order was originally served that justify its removal. The removal of the tree would disrupt the linear feature linking the limes on either side and justification is not considered sufficient to warrant its removal. Insufficient information has been submitted with the application in order to justify its removal.

Officer to contact: **Mrs K Jensch**

19th November 2012