

**Reference: 09/00279/TPO**

**Date Submitted: 27<sup>th</sup> April 2010**

**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 the health and stability of the tree.

The application is placed before Development Committee due to the number of supporting letters which were submitted with this application and the long planning history for the tree concerned.

**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**

**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:-**

<b>Consultation reply</b>	<b>Assessment of Head of Regulatory Services</b>
<p><b>Leicestershire County Council Ecology</b> – 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 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>	<p>Noted, this can be an informative on the decision should it be permitted.</p>
<p><b>Leicestershire County Council Assistant Arboricultural and Forestry Officer:</b></p> <p>On carrying out an onsite inspection, from ground level only, he confirms 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 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>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 the Officer would <b>not</b> recommend the approval of this application.</p>	<p>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>

**Representations:** Five letters of supported were submitted with the application. A site notice was posted on 20<sup>th</sup> May 2010 but no additional representations from neighbouring properties were received.

<b>Neighbouring Properties comments received as part of the submitted application</b>	
Perceived problems with subsidence at 1 Clark Drive	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.
General support for the applicant with regard to perceived health and safety problems with the tree	The stated health and safety problems with the tree have been addressed by the Leicestershire County Council's Assistant Arboricultural and Forestry Officer.

**Other material considerations (not raised through consultation or representation)**

<b>Reason for submission of application:</b>	
<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>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</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.

A question was put to the council regarding the absence of any reference to the hazard issues. The reply received stated "*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 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

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 not in a healthy condition.

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, the latest 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.

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.

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-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.

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 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.”*

There is no reference by the Council to the potential difficulties or costs clearly identified by the two county officers.

**Impact on Streetscene:**

The applicant has stated in his supporting evidence that it is surely self-evident that any possible question of hazard must take precedence

The tree is visually prominent and forms an intrinsic part of the streetscene. The Council has taken advice from a specialist and they have

<p>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>stated that the tree has an amenity value. The Arboricultural advisor states that the amenity value of the tree and the line of lime trees would be the greater for retaining all of the trees. They go on to state that the overall amenity value of the group would diminish if it was to be removed.</p> <p>As the tree is visually prominent, 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>
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**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.

The applicant has stated that the tree poses a risk to health and safety and there are potential difficulties and cost to maintain the tree with regards to root damage. However, whilst sympathetic to the concerns of the applicant there has been no specialist evidence submitted with the application as to its health, condition or potential for damage. No details of the cost implications have been submitted to the authority for this to be considered as a material consideration. It is not considered that sufficient evidence has been submitted with the application to justify the removal of the tree. The Council has sought specialist advice and have been advised not to approve the removal of the tree.

**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.

Officer to contact: **Mrs Karen Jensch**

**15 June 2010**