

Date: 5 January 2009

**To: All Members of the Planning Committee**

Mr R Mayne (Chairman)	Mr WJ Crooks	Mr K Nichols
Mr DW Inman (Vice-Chairman)	Mrs A Hall	Mr LJP O'Shea
Mrs M Aldridge	Mr P Hall	Mr BE Sutton
Mr JG Bannister	Mr CG Joyce	Mr R Ward
Mr CW Boothby	Dr JR Moore	Mrs BM Witherford
Mr JC Bown	Mr K Morrell	

Copy to all other Members of the Council

(other recipients for information)

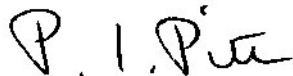
Dear Councillor

There will be a meeting of the **PLANNING COMMITTEE** in the Council Chamber, Council Offices, Hinckley on **TUESDAY, 13 JANUARY 2009** at **6.30pm**, and your attendance is required.

The agenda for the meeting is set out overleaf.

**There will be a pre-meeting at 6.00pm in the Members' Room (Annexe) to inform Members of any late items.**

Yours sincerely



Pat Pitt (Mrs)  
Corporate Governance Officer

**PLANNING COMMITTEE**

**13 JANUARY 2009**

**A G E N D A**

1. APOLOGIES AND SUBSTITUTIONS

RESOLVED

2. MINUTES

To confirm the minutes of the meeting held on 16 December 2008 attached marked 'P43'.

3. ADDITIONAL URGENT BUSINESS BY REASON OF SPECIAL CIRCUMSTANCES

To be advised of any additional items of business which the Chairman decides by reason of special circumstances shall be taken as matters of urgency at this meeting.

4. DECLARATIONS OF INTEREST

To receive verbally from members any disclosures which they are required to make in accordance with the Council's code of conduct or in pursuance of Section 106 of the Local Government Finance Act 1992. **This is in addition to the need for such disclosure to be also given when the relevant matter is reached on the Agenda.**

5. QUESTIONS AND PETITIONS

To hear any questions and to receive any petitions in accordance with Council Procedure Rules 10 and 11.

6. DECISIONS DELEGATED AT PREVIOUS MEETING

Director of Community and Planning Services to report on any decisions delegated at the previous meeting which had now been issued.

RESOLVED

7. TOWN & COUNTRY PLANNING ACT 1990 - APPLICATIONS TO BE DETERMINED

Schedule of planning applications attached marked 'P44' (pages 1 – 39).

RESOLVED

8. HOUSING TYPE AND SIZE ON REDEVELOPMENT SITES

Report of the Director of Community and Planning Services attached marked 'P45' (pages 40 - 42).

RESOLVED

9. THE BOROUGH OF HINCKLEY AND BOSWORTH (LAND AT 17 LAUNDON CLOSE, GROBY) TREE PRESERVATION ORDER 2008

Report of the Deputy Chief Executive attached marked 'P46' (pages 43 - 54).

- RESOLVED 10. THE BOROUGH OF HINCKLEY AND BOSWORTH (LAND AT THE BOWLING CLUB, RECTORY LANE, MARKET BOSWORTH) TREE PRESERVATION ORDER 2008
- Report of the Deputy Chief Executive attached marked 'P47' (pages 55 - 65).
- RESOLVED 11. APPEALS LODGED AND DETERMINED
- Report of the Director of Community and Planning Services attached marked 'P48' (pages 66 – 67).
- RESOLVED 12. APPEALS PROGRESS
- Report of the Director of Community and Planning Services attached marked 'P49' (pages 68 – \*).
- RESOLVED 13. ANY OTHER ITEMS OF BUSINESS WHICH THE CHAIRMAN DECIDES HAVE TO BE DEALT WITH AS MATTERS OF URGENCY

**NOTE: AGENDA ITEMS AGAINST WHICH THE WORD "RESOLVED" APPEARS ARE MATTERS WHICH ARE DELEGATED TO THE COMMITTEE FOR A DECISION. OTHER MATTERS ON THIS AGENDA WILL BE THE SUBJECT OF RECOMMENDATIONS TO COUNCIL.**

**HINCKLEY AND BOSWORTH BOROUGH COUNCIL**

**PLANNING COMMITTEE**

**16 DECEMBER 2008 AT 6.30 PM**

**PRESENT:** MR R MAYNE - CHAIRMAN  
MR DW INMAN - VICE-CHAIRMAN

Mrs M Aldridge, Mr CW Boothby, Mr JC Bown, Mr MB Cartwright, Mr WJ Crooks, Mr DM Gould, Mrs A Hall, Mr P Hall, Mr CG Joyce, Mr K Morrell, Mr K Nichols, Mr LJP O'Shea and Mr BE Sutton.

In accordance with Council Procedure Rule 4.4 Mr SL Bray and Mr AJ Smith also attended the meeting.

Officers in attendance: Mrs T Darke, Mr P Metcalfe, Miss R Owen, Mr TM Prowse and Mr M Rice.

**322 APOLOGIES AND SUBSTITUTIONS**

It was reported that since the despatch of the agenda, Mr R Ward had been appointed to the Committee.

Apologies for absence were submitted on behalf of Mr R Ward and Mrs BM Witherford and the substitution of Mr Cartwright for Mr Ward and Mr Gould for Mrs Witherford authorised in accordance with Council Procedure Rule 4.3.

**323 MINUTES (P38)**

It was moved by Mr Nichols, seconded by Mr Crooks and

**RESOLVED** – the minutes of the meeting held on 18 November 2008 be confirmed and signed by the Chairman.

**324 DECLARATIONS OF INTEREST**

Messrs Boothby, Bown, Cartwright, Crooks and O'Shea declared personal interests in application 08/01039/FUL.

Mrs Aldridge declared a personal and prejudicial interest in application 08/01056/FUL.

Mr Bown declared a personal and prejudicial interest in application 08/00965/FUL.

Mr Gould declared a personal and prejudicial interest in applications 08/01022/FUL and 08/01023/CON.

Mrs Hall declared a predetermination of application 08/01035/GDOT.

325 DECISIONS DELEGATED AT PREVIOUS MEETING

The Director of Community and Planning Services reported that with regard to application 08/00884/FUL which had been considered at the previous meeting, approval had now been issued.

326 TOWN AND COUNTRY PLANNING ACT 1990 - APPLICATIONS TO BE DETERMINED (P39)

The Committee considered a schedule of planning applications, together with a list of late items, and the recommendations of the Director of Community and Planning Services.

- (a) 08/00815/FUL – Demolition of existing garage filling station and bungalow and erection of 12 dwellings, Foxcovert, 83 Main Street, Carlton – Springbourne Homes

It was moved by Mr Nichols, seconded by Mr Crooks and

RESOLVED – subject to the execution of an Agreement under Section 106 of the Town and Country Planning Act 1990 and Section 111 of the Local Government Act 1972 to provide financial contributions towards libraries (£670), civic amenity (£379), health facilities (£12,251), police provision (£6,666) and play and open space (£15,647.90), the Director of Community and Planning Services be granted powers to issue Planning Permission subject to the conditions contained within the officer's report. Failure to complete the agreement by 11 January 2009 may result in the application being refused.

- (b) 08/00824/FUL – Demolition of existing building and erection of 3 light industrial units, Clinton, Unit 3, Station Road Industrial Estate, Station Road, Market Bosworth – Mr T Clinton

On the motion of Mr Crooks, seconded by Mrs Aldridge, it was

RESOLVED – the application be approved subject to the conditions contained in the officer's report.

Having declared a personal and prejudicial interest in the following application, Mr Bown left the meeting at 6.50pm.

- (c) 08/00965/FUL – Substitution of house types to plots 16-23, 40-50 and 57-61 inclusive and associated works, Land rear of Oaklands, Breach Lane, Earl Shilton – InnovITS

On the motion of Mr O'Shea, seconded by Mrs Aldridge, it was

RESOLVED – subject to the execution of an appropriate supplementary legal agreement under Section 106 of the Town and Country Planning Act 1990 and Section 111 of the Local Government Act 1972 before 7 January 2009 to secure

developer contributions in accordance with the existing Section 106 agreement for the overall site, the Director of Community and Planning Services be granted powers to issue Planning Permission subject to the conditions contained in the officer's report. Failure to execute a legal agreement by 7 January 2009 may result in the application being refused.

Mr Bown returned to the meeting at 6.51pm.

- (d) 08/00780/FUL – Erection of permanent farm manager's dwelling, The Poultry Farm, Desford Road, Ratby – Mr J Hay

It was moved by Mr Crooks, seconded by Mr Nichols and

RESOLVED – the application be approved subject to the conditions contained within the officer's report.

- (e) 08/01013/FUL – Conversion of agricultural building to dwelling and alterations to access, Dalebrook Farm, Leicester Road, Earl Shilton – AR Cartwright Ltd

On the motion of Mr Crooks, seconded by Mr Nichols, it was

RESOLVED – the application be approved subject to the conditions contained in the officer's report and late items.

Having declared a personal and prejudicial interest in the following two applications, Mr Gould left the meeting at 7.00pm.

- (f) 08/01022/FUL – Demolition of existing workshop and erection of A1 use retail store and ten apartments with associated car parking, landscaping and access, 59 High Street, Barwell – Tesco Stores Ltd

Members requested that notes to applicant be included to ask them not to use articulated lorries and to look at access arrangements. It was moved by Mr O'Shea, seconded by Mr Sutton and

RESOLVED – the application be approved subject to the conditions contained within the officer's report and late items and the abovementioned notes to applicant.

- (g) 08/01023/CON – Demolition of existing dwelling and garage, 59 High Street, Barwell – Tesco Stores Ltd

RESOLVED – the application be approved subject to the conditions in the officer's report and late items.

Mr Gould returned to the meeting at 7.35pm.

- (h) 08/01029/COU – Change of use of existing dwelling house to place of worship and teaching, day centre, living accommodation and formation of parking area (retrospective application), Stretton House, Watling Street, Burbage – Sachkhand Nanak Dham

It was reported that this application had been withdrawn.

- (i) 08/01035/GDOT – Erection of telecommunications mast, Boyslade Road, Burbage – Vodafone Ltd

Having declared a predetermination of this application, Mrs Hall spoke on the matter then left the meeting at 7.37pm.

It was moved by Mr O'Shea, seconded by Mr Boothby and

RESOLVED – subject to no other significant representations being received, the Director of Community and Planning Services be granted powers to refuse planning permission for the reasons contained in the officer's report.

Mrs Hall returned to the meeting at 7.43pm. Messrs Bray and Smith left the meeting at 7.43pm.

- (j) 08/01039/FUL – New Visitor Centre, Welcome Centre and associated external works, Twycross Zoological Park, Burton Road, Norton Juxta Twycross – Twycross Zoological Park

Although generally in support of this application, Members expressed concern with regard to the highways issues. It was suggested that the local Councillors work with the Zoo to look at ways of making the road safer.

RESOLVED – the application be approved subject to the conditions contained within the officer's report.

- (k) 08/01041/REM – Erection of bungalow, double garage and covered gate house (reserved matters), 3 The Rookery, Groby – Mr and Mrs Spencer

Mr Sutton left the meeting at 7.57pm and returned at 7.59pm.

It was moved by Mr Crooks, seconded by Mrs Hall and

RESOLVED – the application be approved subject to the conditions contained in the officer's report.

Mr Cartwright wished it to be recorded that he abstained from voting on this application.

- (l) 08/01056/FUL – Erection of 60m meteorological mast to gather wind data for 24 months, Land adj Stocks House Farm, Desford Field Lane, Peckleton – Mr Matthew Scott

Having declared a personal and prejudicial interest in this application, Mrs Aldridge left the meeting at 8.13pm. Mr Bown also left at 8.13pm and returned at 8.16pm.

It was proposed by Mr Cartwright that the application be refused due to the visual impact of the mast. In the absence of a seconder, the motion was not put to the vote.

It was moved by Mr Gould, seconded by Mr Hall and

RESOLVED – the application be approved subject to the conditions in the officer's report and late items.

Mrs Aldridge returned to the meeting at 8.33pm.

- (m) 08/01064/FUL – Change of use to D1 dental practice, 105-107 Church Street, Burbage – Rodericks Ltd

It was moved by Mr O'Shea, seconded by Mr Crooks and

RESOLVED – the application be approved subject to the conditions contained in the officer's report and late items.

- (n) 08/01079/FUL – Erection of dog kennels, 33 Merrylees Road, Newbold Heath, Newbold Verdon – Mrs Sue Hobbins

Mrs Hall left the meeting at 8.45pm and returned at 8.46pm.

On the motion of Mr Nichols, seconded by Mr Sutton it was

RESOLVED – the application be approved subject to the conditions contained in the officer's report.

### 327 APPEALS LODGED AND DETERMINED (P40)

A summary was submitted of appeals lodged and determined since the last meeting. It was noted that one appeal had been lodged.

On the motion of Mr Crooks, seconded by Mr Nichols, it was

RESOLVED – the report be noted.



328 APPEALS – PROGRESS (P41)

A schedule was submitted indicating the stages that various appeals against planning decisions had reached.

It was moved by Mr Crooks, seconded by Mrs Aldridge and

RESOLVED – the report be noted.

329 MATTERS FROM WHICH THE PUBLIC MAY BE EXCLUDED

On the motion of Mr Nichols, seconded by Mr Boothby, it was

RESOLVED - in accordance with Section 100A(4) of the Local Government Act 1972 the public be excluded from the undermentioned item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 2 and 10 of Part I of Schedule 12A of that Act.

330 PLANNING ENFORCEMENT ACTION (P42)

Members were provided with a periodic report on planning enforcement actions taken. It was moved by Mr Crooks, seconded by Mr Nichols and

RESOLVED – the report be noted.

(The meeting closed at 8.55pm)

**PLANNING COMMITTEE – 13 JANUARY 2009**

**REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES**  
**RE: HOUSING TYPE AND SIZE ON REDEVELOPMENT SITES**

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**1. PURPOSE OF REPORT**

- 1.1 To appraise members of the implications of the resolution by Council to explore through the Local Development Framework (LDF), the tightening of policies to give Planning Committee grounds to refuse planning applications for the redevelopment of sites with flats and apartments, particularly in Hinckley Town Centre.

**2. RECOMMENDATION**

- 2.1 That Members agree that decisions on planning applications for flats and apartments will be made on the basis of Central Government advice in Planning Policy Statement 3 (PPS3), "Housing", and policies set out in the Regional Spatial Strategy as well as the Core Strategies and Supplementary Planning Document on housing forming part of the Local Development Plan Document, as informed by Strategic Housing Market Assessments.
- 2.2 That Members agree that the requirement for parking levels will be based on the appropriate Development Plan Document of the LDF as informed by the adopted County Council's Highways, Transportation and Development (HtD) document as well as Central Government's "Manual for Streets" and Planning Policy Guidance 13 "Transport" (PPG13).

**3. BACKGROUND TO THE REPORT**

- 3.1 Following the Council resolution in August 2008 requiring the Director of Community and Planning Services to make strong representations to the Secretary of State to give Councils more powers to stop excessive and unnecessary planning applications for flats, a response has been received from the Department for Communities and Local Government.
- 3.2 Essentially, the Secretary of State has re-emphasised the importance of PPS3, published in November 2006, which stresses the need to provide a wide choice of high quality homes in suitable locations to address the housing requirements of the community. PPS3 requires local authorities to achieve a good mix of housing, based on the variety of households that need housing in their area which should be identified through a Strategic Housing Market Assessment (SHMA).
- 3.3 A SHMA has been undertaken for the Leicestershire area covering all forms of housing need up until 2026 for each of the Council areas. This is due to be rolled out during January 2009 and some members of the Planning Committee will no doubt be invited to the initial presentation of the document.

- 3.4 The draft document identifies the continuing need to provide a mix of housing types for the Borough Council area and whilst the proportion of flats/apartments to individual houses/bungalows is decreasing there will continue to be a requirement.
- 3.5 On the basis of the SHMA, it will not be feasible or acceptable for this Authority to adopt, through the Local Development Plan Documents, policies which do not allow for mixed communities and ensure that flats and smaller homes are developed alongside larger houses. On smaller sites it will not be possible to prevent higher density development, particularly in town centre locations.
- 3.6 Members will be very much aware of the recent appeal decision in relation to 3 Cleveland Road, Hinckley for 14 apartments on a site currently occupied by one large detached house, which was reported to Committee in November 2008. The Inspector emphasised the need to follow the clear purpose of Government policy and considered that density of development in itself was not objectionable or that in principle the development of apartments should affect the character of the area. Citing other redevelopment approvals close by (also permitted on appeal) he indicated that these showed a clear and appropriate response to the national policy direction aimed at increasing housing provision in accessible locations.
- 3.7 Your officers will continue to urge and encourage developers to incorporate a good mix of house types on both new and re-development sites in accordance with Government guidance and adopted policy.
- 3.8 With regard to parking requirements for all forms of residential developments PPS3 allows for flexibility in setting policies taking into account expected levels of car ownership, the importance of promoting good design and the need to use land efficiently.
- 3.9 The forthcoming Development Plan Document (DPD) of the LDF relating to parking requirements will embrace Leicestershire County Councils "Highways, Transport and Development" (HtD) and the Governments "Manual for Streets" as well as Planning Policy Guidance 13 "Transport".
- 3.10 It is clear from this guidance and advice that parking needs will vary depending on the type of development proposed and its location. There will be locations, such as town centres where services are readily accessible without a car and where significantly lower levels of off street parking should be accepted.
- 3.11 Officers are of the opinion that failure to heed this advice will inevitably lead to appeals being overturned and costs being awarded against the Authority as in the case of the recent Cleveland Road proposal.

#### 4. **FINANCIAL IMPLICATIONS (AB)**

There are none arising directly from recommendations of this report, but failure to determine applications in accordance with Government guidance runs a serious risk of involving costs being awarded against the Authority by the Planning Inspectorate.

5. **LEGAL IMPLICATIONS (MR)**

As set out in the body of the report.

6. **CORPORATE PLAN IMPLICATIONS**

6.1 The report addresses the following corporate aims:

Cleaner and greener neighbourhoods  
Strong and distinctive communities.

7. **CONSULTATION**

None.

8. **RISK IMPLICATIONS**

8.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

8.2 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

<b>Management of significant (Net Red) Risks</b>		
<b>Risk Description</b>	<b>Mitigating actions</b>	<b>Owner</b>

9. **RURAL IMPLICATIONS**

9.1 The report affects rural parts equally with urban parts of the Borough.

10. **CORPORATE IMPLICATIONS**

10.1 By submitting this report, the report author has taken the following corporate implications.

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Human Resources implications
- Voluntary Sector

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Background Papers: Planning Application No. 08/00221/FUL – 3 Cleveland Road, Hinckley  
Letters from Director of Community and Planning Services dated 14.08.08 and response from Dept. for Communities and Local Government dated 29.08.08  
Strategic Housing Market Assessment (SHMA)

Contact Officer: Chris Merriman ext 5774

**PLANNING COMMITTEE – 13 JANUARY 2009**

**REPORT OF THE DEPUTY CHIEF EXECUTIVE**

**RE: THE BOROUGH OF HINCKLEY AND BOSWORTH (LAND AT 17 LAUNDON CLOSE, GROBY) TREE PRESERVATION ORDER 2008**

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**1. PURPOSE OF REPORT**

- 1.1 To consider the confirmation of the above Order.

**2. RECOMMENDATION**

- 2.1 That the Order be confirmed as made.

**3. BACKGROUND TO REPORT**

- 3.1 The Borough Council has the power to make Tree Preservation Orders under Sections 198 and 201 of the Town and Country Planning Act 1990. The above Order was made under delegated powers on 4 September 2008, copy attached to this report. The effect of the Order is to protect the tree set out in the attached schedule and plan, indicated as a T1 which is an Ash Tree.
- 3.2 The Order came into effect when it was made. The reasons for making the Order are that the tree is in a healthy condition and is considered to enhance the visual amenity of the area, and it is visible from Laundon Close.
- 3.3 Objections have been made by a local resident, in a letter received by the Borough Council on 6<sup>th</sup> October 2008, a copy of which is attached to this report. The Legal Section attempted to address this objection via correspondence with the objectors however the Legal Section have not had a response to its letter. The Council's Planning Officer dealing with this Order has consulted with the Borough Council's Consultant Arboriculturist and makes the following comments to the objections made.
- 3.4 The first objection stated that they were not consulted before the Order was made. It is true that they were not consulted prior to the order being made; for clarification of the Tree Preservation Order making process I can confirm that when the Council decides that a tree is worthy of protection an interim Order is made and placed on the particular tree. This Order is valid for 6 months from the day on which it is made; the Order is placed on the tree prior to any consultation with the residents/ relevant parties because it is necessary for the tree to be protected while the consultation is taking place. In this particular case the Council decided that the tree may be under threat and that it was worthy of protection. Consequently an interim Order was placed on the tree which means that the tree is protected for a period of 6 months from the 4th September 2008.

After the Order was made a letter was sent to all affected parties (land owners, adjoining land owners and the Parish Council). The letter explained

that the Order had been made and enclosed a copy of the Order, notice, regulations and guidance. The letter also gave the opportunity for the parties to object. This letter constituted the consultation process because it informed the parties of the Order and explained how an objection or representation can be made. The Order making procedure is governed by the Town and Country Planning Act 1990 and the Town and Country Planning (Trees) Regulations 1999, and I confirm that Council has complied with the Legislation and guidance when making this Order.

- 3.5 Secondly, the objectors disputed that the trees contribute to the amenity of the area because the tree is in a cul de sac and therefore not visible to anyone other than the residents of the street and not visible from a main road. The Planning Section and its Consultant Arboriculturalist consider that this tree is worthy of protection because it adds to the amenity of the surrounding area. The tree is visible from a public highway, namely Laundon Close, and the Council believes if the tree was to be removed it would have a significant detrimental impact on the local environment.
- 3.6 The objectors also asked if the Council had considered protecting the other trees. The Planning Section has confirmed that approximately 30 years ago when the developer built the houses in this area the developer had an obligation to provide a certain amount of trees. These trees were all protected by a group Tree Preservation Order. Consequently any trees in the area that are younger than the trees in the Group order are not protected. The tree in this Order falls into this category and the Planning Section decided that it was a good specimen and therefore worthy of protection.
- 3.7 Finally the objectors are concerned that the tree is too close to their house and that it may cause damage to the foundations. They are also concerned about bird droppings and that the tree is blocking light. The tree has been inspected by the Planning Section and its Consultant Arboriculturalist and they consider that it is a sufficient distance away from the properties on Laundon Close so as not to cause damage to foundations. They also consider that if regular maintenance is carried out on the tree then it should not block light into the property, the Order does not prevent necessary works being carried out to the tree in the future, subject to formal application and approval by the Planning Section. Also droppings from roosting birds are not generally accepted as valid reasons to fell a tree, were this to be the case most urban tree cover would be lost.
- 3.8 It is accordingly recommended that the Order be confirmed as it stands.

#### 4. **FINANCIAL IMPLICATIONS (AB)**

- 4.1 None relating directly to the report.

#### 5. **LEGAL IMPLICATIONS (AB)**

- 5.1 Contained in the Body of the report

#### 6. **CORPORATE PLAN IMPLICATIONS**

- 6.1 None

7. **CONSULTATION**

7.1 The relevant statutory consultees have been consulted. Those who responded are referred to in the body of the report.

8. **RISK IMPLICATIONS**

8.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

The following significant risks associated with this report / decisions were identified from this assessment:

<b>Management of significant (Net Red) Risks</b>		
<b>Risk Description</b>	<b>Mitigating actions</b>	<b>Owner</b>
If the Order is not confirmed on the tree the tree may potentially be cut down or damaged	Protect the tree by confirming the Tree Preservation Order on it	Joanne Orton

9. **RURAL IMPLICATIONS**

9.1 Tree Preservation Order affect rural and urban equally.

10. **CORPORATE IMPLICATIONS**

10.1 None

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Background papers: The Borough Council of Hinckley & Bosworth (Land at 17 Laundon Close, Groby) Tree Preservation Order 2008.

Planning File Ref.  
Legal Department. File Ref. PTPO/116

Contact Officer: Joanne Orton, Planning Technician, ext 5666

DEVELOPMENT  
SERVICES

06 OCT 2008

RECEIVED

06 SEP 2008

Dear Sir/Madam,

I write to express my strong objection against your decision to place a Tree Preservation Order (TPO) on the Ash tree, that is situated on land owned and maintained by myself.

You did not consult with neither myself or my wife before making your decision. This I find very rude. As a matter of courtesy, I expect to be consulted on all decisions that affect my property. Also, the land that the tree is on, is not maintained or owned by the Authority, Hinckley and Bosworth Council. Therefore, you do not own my tree.

In your letter, you stated that "this tree contributes significantly to the visual appearance of Groby". In case you had not realised, we live in a culdesac with no more than 30 houses, and there are not many visitors or residents of Groby who come to visit my tree. May I also point out that you can't see the tree unless you stand outside my house, so it is not seen from a main road. I would also like to ask if you had noticed on your visit to my property, that there are other properties on the street that have large trees on their front lawn. Have you considered placing Tree Preservation Orders on them trees too?

I feel that trees of this nature should not be planted so close to peoples homes, causing possible damage to foundations. The tree also attracts starlings, whose droppings can cause damage to cars, not to mention the health implications. Also, as I mentioned in my first application to remove the tree, the tree has grown so large that it is now blocking the light in my daughters room. In view of the recent credit crunch, I can no longer afford to keep a light on in her room during the day, which she uses for her nursing studies. At the moment, she requires a light on during the day.

I hope to hear from you as a matter of urgency on this matter, and expect that you will take in to account my reasons against your TPO, and will reconsider placing the order on it.

Yours Sincerely,

A handwritten signature in black ink, appearing to be 'I.R.', followed by a long horizontal line extending to the right.



**THE BOROUGH COUNCIL OF HINCKLEY & BOSWORTH  
(LAND AT 17 LAUNDON CLOSE, GROBY)  
TREE PRESERVATION ORDER 2008**

The Borough Council of Hinckley & Bosworth, in exercise of the powers conferred on them by sections 198 (201) and 203 of the Town and Country Planning Act 1990 hereby make the following Order:-

**Citation**

1. This Order may be cited as The Borough Council of Hinckley & Bosworth (Land at 17 Laundon Close, Groby) Tree Preservation Order 2008.

**Interpretation**

2. In this Order “the authority” means the Borough Council of Hinckley and Bosworth and unless the context otherwise requires, any reference in this Order to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990

**Application of section 201**

3. The authority hereby direct that section 201 (provisional tree preservation orders) shall apply to this Order and, accordingly, this Order shall take effect provisionally on **4<sup>th</sup> September 2008**

**Prohibited acts in relation to trees**

4. Without prejudice to subsections (6) and (7) of section 198 (power to make tree preservation orders) [or subsection (3) of section 200 (orders affecting land where Forestry Commissioners interested)], and subject to article 5, no person shall:-

- (a) cut down, top, lop, uproot, wilfully damage or wilfully destroy; or
- (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of, any tree specified in Schedule 1 to this Order or comprised in a group of trees or in a woodland so specified, except with the consent of the authority and, where such consent is given subject to conditions, in accordance with those conditions.

**Exemptions**

5. - (1) Nothing in article 4 shall prevent –
  - (a) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land of the statutory undertaker and the work is necessary –
    - (i) in the interests of the safe operation of the undertaking;
    - (ii) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or
    - (iii) to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;
  - (b) the cutting down, topping, lopping or uprooting of a tree cultivated for the production of fruit in the course of a business or trade where such work is in the interests of that business or trade;
  - (c) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit;
  - (d) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable a person to implement a planning permission (other than an outline planning permission or, without prejudice to paragraph (a) (iii), a permission granted by or under the Town and Country Planning (General Permitted Development) Order 1995) granted on an application under Part III of the Act, or deemed to have been granted (whether for the purposes of that Part or otherwise);
  - (e) the cutting down, topping, lopping or uprooting of a tree by or at the request of the Environment Agency to enable the Agency to carry out the development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;
  - (f) the cutting down, topping, lopping or uprooting of a tree by or at the request of a drainage body where that tree interferes, or is likely to interfere, with the exercise of any of the functions of that body in relation to the maintenance, improvement or construction of watercourses or of drainage works, and for this purpose “drainage body” and “drainage” have the same meanings as in the Land Drainage Act 1991; or
  - (g) without prejudice to section 198(6)(b), the felling or lopping of a tree or the cutting back of its roots by or at the request of, or in accordance with a notice served by, a licence holder under paragraph 9 of Schedule 4 to the Electricity Act 1989.

- (2) In Paragraph (1), “statutory undertaker” means any of the following:-

- a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power,
- a relevant airport operator (within the meaning of Part V of the Airports Act 1986),
- the holder of a licence under section 6 of the Electricity Act 1989,
- a public gas transporter,
- the holder of a licence under section 7 of the Telecommunications Act 1984 to whom the telecommunications code (within the meaning of that Act) is applied,
- a water or sewage undertaker,
- the Civil Aviation Authority or a body acting on behalf of that Authority
- the Post Office

### **Applications for consent under the Order**

6. An application for consent to the cutting down, topping, lopping or uprooting of any tree in respect of which this Order is for the time being in force shall be made in writing to the authority and shall-

- (a) identify the tree or trees to which it relates (if necessary, by reference to a plan);
- (b) specify the work for which consent is sought; and
- (c) contain a statement of the applicant's reasons for making the application

### **Application of provisions of the Town and Country Planning Act 1990**

7. -(1) The provisions of the Town and Country Planning Act 1990 relating to registers, applications, permissions and appeals mentioned in column (1) of Part I of Schedule 2 to this Order shall have effect, in relation to consents under this Order and applications for such consent, subject to the adaptations and modifications mentioned in column (2).

-(2) The provisions referred to in paragraph (1), as so adapted and modified, are set out in Part II of that Schedule.

### **Directions as to replanting**

8. -(1) Where consent is granted under this Order for the felling in the course of forestry operations of any part of a woodland area, the authority may give to the owner of the land on which that part is situated ("the relevant land") a direction in writing specifying the manner in which and the time within which he shall replant the relevant land.

-(2) Where a direction is given under paragraph (1) and trees on the relevant land are felled (pursuant to the consent), the owner of that land shall replant it in accordance with the direction.

-(3) A direction under paragraph (1) may include requirements as to:-

- (a) species;
- (b) number of trees per hectare;
- (c) the preparation of the relevant land prior to the replanting; and
- (d) the erection of fencing necessary for the protection of the newly planted trees.

### **Compensation**

9. -(1) If, on a claim under this article, a person establishes that loss or damage has been caused or incurred in consequence of:-

- (a) the refusal of any consent required under this Order; or
- (b) the grant of any such consent subject to conditions, he shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.

-(2) No claim, other than a claim made under paragraph (3), may be made under this article:-

- (a) if more than 12 months have elapsed since the date of the authority's decision or, where such a decision is the subject of an appeal to the Secretary of State, the date of the final determination of the appeal; or
- (b) if the amount in respect of which the claim would otherwise have been made is less than £500.

-(3) Where the authority refuse consent under this Order for the felling in the course of forestry operations of any part of a woodland area, they shall not be required to pay compensation to any person other than the owner of the land; and such compensation shall be limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.

-(4) In any other case, no compensation shall be payable to a person:-

- (a) for loss of development value or other diminution in the value of the land;
- (b) for loss or damage which, having regard to the statement of reasons submitted in accordance with article 6(c) and any documents or other evidence submitted in support of any such statement, was not reasonably foreseeable when consent was refused or was granted subject to conditions;
- (c) for loss or damage reasonably foreseeable by that person and attributable to his failure to take reasonable steps to avert the loss or damage or to mitigate its extent; or

(d) for costs incurred in appealing to the Secretary of State against the refusal of any consent required under this Order or the grant of any such consent subject to conditions.

-(5) Subsections (3) to (5) of section 11 (terms of compensation on refusal of licence) of the Forestry Act of 1967 shall apply to the assessment of compensation under paragraph (3) as it applies to the assessment of compensation where a felling licence is refused under section 10 (application for felling licence and decision of Commissioners thereon) of that Act as if for any reference to a felling licence there were substituted a reference to a consent required under this Order and for the reference to the Commissioners there were substituted a reference to the authority.

-(6) In this article:-  
“development value” means an increase in value attributable to the prospect of development; and, in relation to any land, the development of it shall include the clearing of it; and  
“owner” has the meaning given to it by section 34 of the Forestry Act 1967.

**Dated this 4<sup>th</sup> day of September 2008**

**The Common Seal of the Borough Council of Hinckley and Bosworth  
was hereunto affixed in the presence of:-**

**Authorised Signatory**

**SCHEDULE 1**

**Article 4**

**SPECIFICATION OF TREES**

**Trees specified individually**

(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
T1	Ash ( <i>Fraxinus excelsior</i> )	17 Laundon Close, Groby

**Trees specified by reference to an area**

(within a dotted black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>

**Groups of trees**

(within a broken line on the map)

<i>Reference on map</i>	<i>Description (including number of trees in the group)</i>	<i>Situation</i>

**Woodlands**

(within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>

**SCHEDULE 2**

**Article 7**

**PART I**

Provisions of the Town and Country Planning Act 1990 applied with adaptations or modifications

<i>Provision of the Town and Country Planning Act 1990</i>	<i>Adaptation or modification</i>
Section 69 (registers)	<p>(a) In subsection (1) – omit – “,in such manner as may be prescribed by a development order;”, “such” in the second place where it appears, and “as may be so prescribed”; and (ii) substitute “matters relevant to tree preservation orders made by the authority” for “applications for planning permission”. (b) In subsection (2) – (i) after “contain” insert “, as regards each such order”; and (ii) for paragraphs (a) and (b) substitute – “(a) details of every application under the order and of the authority’s decision (if any) in relation to each such application, and (b)a statement as to the subject matter of every appeal under the order and of the date and nature of the Secretary of State’s determination of it.”. (c) Omit subsections (3) and (4) (as required by section 198(4)).</p>
Section 70 (determination of applications: general considerations)	<p>(a) In subsection (1) – (i) substitute – “Subject to subsections (1A) and (1B), where” for “Where”; “the authority” for “a local planning authority”; “consent under a tree preservation order” for “planning permission” where those words first appear; and “consent under the order” for “planning permission” in both of the other places where those words appear; (ii) after “think fit”, insert- “(including conditions limiting the duration of the consent or requiring the replacement of trees)”; and (iii) omit “subject to sections 91 and 91.”. (b) After subsection (1) insert – ” (1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.     (1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).”. (c) Omit subsections (2) and (3).</p>
Section 75 (effect of planning permission)	<p>(a) In subsection (1) substitute – (i) “Any” for the words “Without” to “any”; (ii) “consent under a tree preservation order” for “planning permission to develop land”; (iii) “the consent” for “the permission”; and (iv) “the land to which the order relates” for “the land”. (b) Omit subsections (2) and (3)</p>

<p>Section 78 (right to appeal against planning decisions and failure to take such decisions)</p>	<p>(a) In subsection (1) substitute –  (i) “the authority” for “a local planning authority”;  (ii) “consent under a tree preservation order” for “planning permission” in the first place where those words appear;  (iii) “consent under such an order” for “planning permission” in the second place where those words appear;  (iv) for paragraph (c) substitute –  “(c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or  (d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority.”.  (b) Omit subsection (2)  (c) In subsection (3) for “served within such time and in such manner as may be prescribed by a development order.”  Substitute –  “in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served-  (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority’s decision or direction or within such longer period as the Secretary of State may allow;  (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.”.  (d) For subsection (4), substitute-  ” (4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3).”.  (e) For subsection (5), substitute –  ” (5) for the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.”.</p>
<p>Section 79 (determination of appeals)</p>	<p>(a) In subsections (1) and (2), substitute “the authority” for “the local planning authority”.  (b) Omit subsection (3).  (c) In subsection (4), substitute –  (i) “section 70(1), (1A) and (1B)” for “sections 70, 72(1) and (5), 73 and 73A and Part I of Schedule 5”;  (ii) “consent under a tree preservation order” for “planning permission”; and  (iii) “the authority.” for “the local planning authority and a development order may apply, with or without modifications, to such an appeal any requirements imposed by a development order by virtue of section 65 or 71.”.  (d) Omit subsections (6) and (6A).  (e) In subsection (7), omit the words after “section 78”.</p>

**Provisions of the Town and Country Planning Act 1990, as adapted and modified by Part I**

The following provisions of the Town and Country Planning Act 1990, as adapted and modified by Part I of this Schedule, apply in relation to consents, and applications for consent, under this Order.

**Section 69**

- (1) Every local planning authority shall keep a register containing information with respect to matters relevant to tree preservation orders made by the authority.
- (2) The Register shall contain, as regards each such order
  - (a) details of every application under the order and of the authority’s decision (if any) in relation to each such application, and

- (b) a statement as to the subject matter of every appeal under the order and of the date and nature of the Secretary of State's determination of it.

\*\*\*\*\*

- (5) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

#### **Section 70**

- (1) Subject to subsections (1A) and (1B), where an application is made to the authority for consent under a tree preservation order:-
  - (a) they may grant consent under the order, either unconditionally or subject to such conditions as they think fit (including conditions limiting the duration of the consent or requiring the replacement of trees); or
  - (b) they may refuse consent under the order
    - (1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area
    - (1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).

\*\*\*\*\*

#### **Section 75**

Any grant of consent under a tree preservation order shall (except in so far as the consent otherwise provides) enure for the benefit of the land to which the order relates and of all persons for the time being interested in it.

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#### **Section 78**

- (1) Where the authority:-
  - (a) refuse an application for consent under a tree preservation order or grant it subject to conditions;
  - (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order or grant it subject to conditions;
  - (c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or
  - (d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority, the applicant may by notice appeal to the Secretary of State.

\*\*\*\*\*

- (3) Any appeal under this section shall be made by notice in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served:-
  - (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority's decision or direction or within such longer period as the Secretary of state may allow;
  - (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.
- (4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3)
- (5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.

#### **Section 79**

- (1) On an appeal under section 78 the Secretary of State may:-
  - (a) allow or dismiss the appeal, or
  - (b) reverse or vary any part of the decision of the authority (whether the appeal relates to that part of it or not),and may deal with the application as if it had been made to him in the first instance.

- (2) Before determining an appeal under section 78 of the Secretary of State shall, if either the appellant or the authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

\*\*\*\*\*

(4) Subject to subsection (2), the provisions of section 70(1), (1A) and (1B) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under section 78 as they apply in relation to an application for consent under a tree preservation order which falls to be determined by the authority.

- (5) The decision of the Secretary of State on such an appeal shall be final.

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- (7) Schedule 6 applies to appeals under section 78.



**PLANNING COMMITTEE – 13 JANUARY 2009**

**REPORT OF THE DEPUTY CHIEF EXECUTIVE RE: THE BOROUGH OF HINCKLEY AND BOSWORTH (LAND AT THE BOWLING CLUB, RECTORY LANE, MARKET BOSWORTH) TREE PRESERVATION ORDER 2008**

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1. **PURPOSE OF REPORT**

1.1 To consider the confirmation of the above Order.

2. **RECOMMENDATION**

2.1 That the Order be confirmed as made.

3. **BACKGROUND TO REPORT**

3.1 The Borough Council has the power to make Tree Preservation Orders under Sections 198 and 201 of the Town and Country Planning Act 1990. The above Order was made under delegated powers on 28 August 2008, copy attached to this report. The effect of the Order is to protect the trees set out in the attached schedule and plan, indicated as a T1 and T2 which are both English Oak Trees.

3.2 The Order came into effect when it was made. The reasons for making the Order are that the trees are in a healthy condition and have significant visual amenity for the surrounding area being visible from Rectory Lane, Market Bosworth.

3.3 An objection has been made by a local resident, in a note received by the Borough Council on 9 September 2008, a copy of which is attached to this report. The Legal Section attempted to address this objection via correspondence with the objectors however the Legal Section have not had a response to its letter. The Council's Planning Officer dealing with this Order has consulted with the Borough Council's Consultant Arboriculturist and makes the following comments to the objection made.

3.4 The objectors state that they do not agree with having a preservation order on these trees as they are far too close to properties 3, 4 & 5 Market Mews and they could cause damage to the properties if branches broke off.

The trees have been inspected by the Planning Section and its Consultant Arboriculturist and they consider that the trees are a sufficient distance away from the properties so as not to cause damage to the properties. The trees have significant amenity value for the surrounding area and should be protected in order to ensure that the trees are kept well maintained and balanced. If regular maintenance is carried out on the trees then they should not cause any damage to the properties; the Order does not prevent acceptable tree maintenance from being carried out with the Council's consent.

3.5 It is accordingly recommended that the Order be confirmed as it stands.

4. **FINANCIAL IMPLICATIONS (AB)**

4.1 None relating directly to the report.

5 **LEGAL IMPLICATIONS(AB)**

5.1 Contained in the body of the report

6. **CORPORATE PLAN IMPLICATIONS**

6.1 None

7. **CONSULTATION**

7.1 The relevant statutory consultees have been consulted. Those who responded are referred to in the body of the report.

8. **RISK IMPLICATIONS**

8.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

The following significant risks associated with this report / decisions were identified from this assessment:

<b>Management of significant (Net Red) Risks</b>		
<b>Risk Description</b>	<b>Mitigating actions</b>	<b>Owner</b>
If the Order is not confirmed on the trees the trees may be potentially cut down or damaged	Protect the trees by confirming the Tree Preservation Order on them	Debbie Bates

9. **RURAL IMPLICATIONS**

9.1 Tree Preservation Order affect rural and urban equally.

10. **CORPORATE IMPLICATIONS**

10.1 None

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Background papers: The Borough Council of Hinckley & Bosworth (Land at the Bowling Club, Rectory Lane, Market Bosworth) Tree Preservation Order 2008  
Planning File Ref.  
Legal Department. File Ref. PTPO/115

Contact Officer: Debbie Bates Planning Technician, ext 5603

**THE BOROUGH COUNCIL OF HINCKLEY & BOSWORTH  
(LAND AT THE BOWLING CLUB, RECTORY LANE, MARKET  
BOSWORTH)  
TREE PRESERVATION ORDER 2008**

The Borough Council of Hinckley & Bosworth, in exercise of the powers conferred on them by sections 198 (201) and 203 of the Town and Country Planning Act 1990 hereby make the following Order:-

**Citation**

1. This Order may be cited as The Borough Council of Hinckley & Bosworth (Land at the Bowling Club, Rectory Lane, Market Bosworth) Tree Preservation Order 2008.

**Interpretation**

2. In this Order “the authority” means the Borough Council of Hinckley and Bosworth and unless the context otherwise requires, any reference in this Order to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990

**Application of section 201**

3. The authority hereby direct that section 201 (provisional tree preservation orders) shall apply to this Order and, accordingly, this Order shall take effect provisionally on **28<sup>th</sup> August 2008**

**Prohibited acts in relation to trees**

4. Without prejudice to subsections (6) and (7) of section 198 (power to make tree preservation orders) [or subsection (3) of section 200 (orders affecting land where Forestry Commissioners interested)], and subject to article 5, no person shall:-

(a) cut down, top, lop, uproot, wilfully damage or wilfully destroy; or  
(b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of, any tree specified in Schedule 1 to this Order or comprised in a group of trees or in a woodland so specified, except with the consent of the authority and, where such consent is given subject to conditions, in accordance with those conditions.

**Exemptions**

5. - (1) Nothing in article 4 shall prevent –
  - (a) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land of the statutory undertaker and the work is necessary –
    - (i) in the interests of the safe operation of the undertaking;
    - (ii) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or
    - (iii) to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;
  - (b) the cutting down, topping, lopping or uprooting of a tree cultivated for the production of fruit in the course of a business or trade where such work is in the interests of that business or trade;
  - (c) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit;
  - (d) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable a person to implement a planning permission (other than an outline planning permission or, without prejudice to paragraph (a) (iii), a permission granted by or under the Town and Country Planning (General Permitted Development) Order 1995) granted on an application under Part III of the Act, or deemed to have been granted (whether for the purposes of that Part or otherwise);
  - (e) the cutting down, topping, lopping or uprooting of a tree by or at the request of the Environment Agency to enable the Agency to carry out the development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;
  - (f) the cutting down, topping, lopping or uprooting of a tree by or at the request of a drainage body where that tree interferes, or is likely to interfere, with the exercise of any of the functions of that body in relation to the maintenance, improvement or construction of watercourses or of drainage works, and for this purpose “drainage body” and “drainage” have the same meanings as in the Land Drainage Act 1991; or
  - (g) without prejudice to section 198(6)(b), the felling or lopping of a tree or the cutting back of its roots by or at the request of, or in accordance with a notice served by, a licence holder under paragraph 9 of Schedule 4 to the Electricity Act 1989.

- (2) In Paragraph (1), “statutory undertaker” means any of the following:-
  - a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power,
  - a relevant airport operator (within the meaning of Part V of the Airports Act 1986),
  - the holder of a licence under section 6 of the Electricity Act 1989,
  - a public gas transporter,
  - the holder of a licence under section 7 of the Telecommunications Act 1984 to whom the telecommunications code (within the meaning of that Act) is applied,
  - a water or sewage undertaker,
  - the Civil Aviation Authority or a body acting on behalf of that Authority
  - the Post Office

#### **Applications for consent under the Order**

6. An application for consent to the cutting down, topping, lopping or uprooting of any tree in respect of which this Order is for the time being in force shall be made in writing to the authority and shall-

- (a) identify the tree or trees to which it relates (if necessary, by reference to a plan);
- (b) specify the work for which consent is sought; and
- (c) contain a statement of the applicant’s reasons for making the application

#### **Application of provisions of the Town and Country Planning Act 1990**

7. -(1) The provisions of the Town and Country Planning Act 1990 relating to registers, applications, permissions and appeals mentioned in column (1) of Part I of Schedule 2 to this Order shall have effect, in relation to consents under this Order and applications for such consent, subject to the adaptations and modifications mentioned in column (2).

-(2) The provisions referred to in paragraph (1), as so adapted and modified, are set out in Part II of that Schedule.

#### **Directions as to replanting**

8. -(1) Where consent is granted under this Order for the felling in the course of forestry operations of any part of a woodland area, the authority may give to the owner of the land on which that part is situated (“the relevant land”) a direction in writing specifying the manner in which and the time within which he shall replant the relevant land.

-(2) Where a direction is given under paragraph (1) and trees on the relevant land are felled (pursuant to the consent), the owner of that land shall replant it in accordance with the direction.

-(3) A direction under paragraph (1) may include requirements as to:-

- (a) species;
- (b) number of trees per hectare;
- (c) the preparation of the relevant land prior to the replanting; and
- (d) the erection of fencing necessary for the protection of the newly planted trees.

#### **Compensation**

9. -(1) If, on a claim under this article, a person establishes that loss or damage has been caused or incurred in consequence of:-

- (a) the refusal of any consent required under this Order; or
- (b) the grant of any such consent subject to conditions, he shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.

-(2) No claim, other than a claim made under paragraph (3), may be made under this article:-

- (a) if more than 12 months have elapsed since the date of the authority’s decision or, where such a decision is the subject of an appeal to the Secretary of State, the date of the final determination of the appeal; or
- (b) if the amount in respect of which the claim would otherwise have been made is less than £500.

-(3) Where the authority refuse consent under this Order for the felling in the course of forestry operations of any part of a woodland area, they shall not be required to pay compensation to any person other than the owner of the land; and such compensation shall be limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.

-(4) In any other case, no compensation shall be payable to a person:-

- (a) for loss of development value or other diminution in the value of the land;
- (b) for loss or damage which, having regard to the statement of reasons submitted in accordance with article 6(c) and any documents or other evidence submitted in support of any such statement, was not reasonably foreseeable when consent was refused or was granted subject to conditions;
- (c) for loss or damage reasonably foreseeable by that person and attributable to his failure to take reasonable steps to avert the loss or damage or to mitigate its extent; or

(d) for costs incurred in appealing to the Secretary of State against the refusal of any consent required under this Order or the grant of any such consent subject to conditions.

-(5) Subsections (3) to (5) of section 11 (terms of compensation on refusal of licence) of the Forestry Act of 1967 shall apply to the assessment of compensation under paragraph (3) as it applies to the assessment of compensation where a felling licence is refused under section 10 (application for felling licence and decision of Commissioners thereon) of that Act as if for any reference to a felling licence there were substituted a reference to a consent required under this Order and for the reference to the Commissioners there were substituted a reference to the authority.

-(6) In this article:-

“development value” means an increase in value attributable to the prospect of development; and, in relation to any land, the development of it shall include the clearing of it; and

“owner” has the meaning given to it by section 34 of the Forestry Act 1967.

**Dated this 28th day of August 2008**

**The Common Seal of the Borough Council of Hinckley and Bosworth  
was hereunto affixed in the presence of:-**

**Authorised Signatory**

**SCHEDULE 1**

**Article 4**

**SPECIFICATION OF TREES**

**Trees specified individually**  
(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
T1 T2	English Oak ( <i>Quercus robur</i> ) English Oak ( <i>Quercus robur</i> )	Bowling Club, Rectory Lane, Market Bosworth Bowling Club, Rectory Lane, Market Bosworth

**Trees specified by reference to an area**  
(within a dotted black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>

**Groups of trees**  
(within a broken line on the map)

<i>Reference on map</i>	<i>Description (including number of trees in the group)</i>	<i>Situation</i>

**Woodlands**  
(within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>

**SCHEDULE 2**  
**Article 7**  
**PART I**

Provisions of the Town and Country Planning Act 1990 applied with adaptations or modifications

<i>Provision of the Town and Country Planning Act 1990</i>	<i>Adaptation or modification</i>
Section 69 (registers)	<p>(a) In subsection (1) – omit – “,in such manner as may be prescribed by a development order;”, “such” in the second place where it appears, and “as may be so prescribed”; and (ii) substitute “matters relevant to tree preservation orders made by the authority” for “applications for planning permission”. (b) In subsection (2) – (i) after “contain” insert “, as regards each such order”; and (ii) for paragraphs (a) and (b) substitute – “(a) details of every application under the order and of the authority’s decision (if any) in relation to each such application, and (b)a statement as to the subject matter of every appeal under the order and of the date and nature of the Secretary of State’s determination of it.”. (c) Omit subsections (3) and (4) (as required by section 198(4)).</p>
Section 70 (determination of applications: general considerations)	<p>(a) In subsection (1) – (i) substitute – “Subject to subsections (1A) and (1B), where” for “Where”; “the authority” for “a local planning authority”; “consent under a tree preservation order” for “planning permission” where those words first appear; and “consent under the order” for “planning permission” in both of the other places where those words appear; (ii) after “think fit”, insert- “(including conditions limiting the duration of the consent or requiring the replacement of trees)”; and (iii) omit “subject to sections 91 and 91.”. (b) After subsection (1) insert – ” (1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area. (1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).”. (c) Omit subsections (2) and (3).</p>
Section 75 (effect of planning permission)	<p>(a) In subsection (1) substitute – (i) “Any” for the words “Without” to “any”; (ii) “consent under a tree preservation order” for “planning permission to develop land”; (iii) “the consent” for “the permission”; and (iv) “the land to which the order relates” for “the land”. (b) Omit subsections (2) and (3)</p>

<p>Section 78 (right to appeal against planning decisions and failure to take such decisions)</p>	<p>(a) In subsection (1) substitute –  (i) “the authority” for “a local planning authority”;  (ii) “consent under a tree preservation order” for “planning permission” in the first place where those words appear;  (iii) “consent under such an order” for “planning permission” in the second place where those words appear;  (iv) for paragraph (c) substitute –  “(c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or  (d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority.”.  (b) Omit subsection (2)  (c) In subsection (3) for “served within such time and in such manner as may be prescribed by a development order.”  Substitute –  “in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served-  (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority’s decision or direction or within such longer period as the Secretary of State may allow;  (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.”.  (d) For subsection (4), substitute-  ” (4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3).”.  (e) For subsection (5), substitute –  ” (5) for the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.”.</p>
<p>Section 79 (determination of appeals)</p>	<p>(a) In subsections (1) and (2), substitute “the authority” for “the local planning authority”.  (b) Omit subsection (3).  (c) In subsection (4), substitute –  (i) “section 70(1), (1A) and (1B)” for “sections 70, 72(1) and (5), 73 and 73A and Part I of Schedule 5”;  (ii) “consent under a tree preservation order” for “planning permission”; and  (iii) “the authority.” for “the local planning authority and a development order may apply, with or without modifications, to such an appeal any requirements imposed by a development order by virtue of section 65 or 71.”.  (d) Omit subsections (6) and (6A).  (e) In subsection (7), omit the words after “section 78”.</p>

**Provisions of the Town and Country Planning Act 1990, as adapted and modified by Part I**

The following provisions of the Town and Country Planning Act 1990, as adapted and modified by Part I of this Schedule, apply in relation to consents, and applications for consent, under this Order.

**Section 69**

- (1) Every local planning authority shall keep a register containing information with respect to matters relevant to tree preservation orders made by the authority.
- (2) The Register shall contain, as regards each such order
  - (a) details of every application under the order and of the authority’s decision (if any) in relation to each such application, and



- (b) a statement as to the subject matter of every appeal under the order and of the date and nature of the Secretary of State's determination of it.

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- (5) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

#### **Section 70**

- (1) Subject to subsections (1A) and (1B), where an application is made to the authority for consent under a tree preservation order:-
  - (a) they may grant consent under the order, either unconditionally or subject to such conditions as they think fit (including conditions limiting the duration of the consent or requiring the replacement of trees); or
  - (b) they may refuse consent under the order
    - (1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area
    - (1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).

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#### **Section 75**

Any grant of consent under a tree preservation order shall (except in so far as the consent otherwise provides) enure for the benefit of the land to which the order relates and of all persons for the time being interested in it.

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#### **Section 78**

- (1) Where the authority:-
  - (a) refuse an application for consent under a tree preservation order or grant it subject to conditions;
  - (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order or grant it subject to conditions;
  - (c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or
  - (d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority, the applicant may by notice appeal to the Secretary of State.

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- (3) Any appeal under this section shall be made by notice in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served:-
  - (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority's decision or direction or within such longer period as the Secretary of state may allow;
  - (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.
- (4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3)
- (5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.

#### **Section 79**

- (1) On an appeal under section 78 the Secretary of State may:-
  - (a) allow or dismiss the appeal, or
  - (b) reverse or vary any part of the decision of the authority (whether the appeal relates to that part of it or not),and may deal with the application as if it had been made to him in the first instance.

- (2) Before determining an appeal under section 78 of the Secretary of State shall, if either the appellant or the authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

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(4) Subject to subsection (2), the provisions of section 70(1), (1A) and (1B) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under section 78 as they apply in relation to an application for consent under a tree preservation order which falls to be determined by the authority.

- (5) The decision of the Secretary of State on such an appeal shall be final.

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- (7) Schedule 6 applies to appeals under section 78.

We do not agree with having a presentation order on these trees as they are far too close to properties S. 4 & 3 Market Mews. Could cause a lot of damage to properties if branches broke off.

REPLY t  
HINC  
TOWN AN

To: Hinckley & Bosw  
Council Offices  
Argents Mead  
Hinckley  
Leicestershire LE

**Date:**

In reply to your notice dated 1<sup>st</sup> September 2008 under the above Act requiring me to give you certain information as to my interest and the interest of other people in 1 Market Mews, Market Bosworth I state that the answers to the questions set out in the schedule below comprise a true and correct statement of all the information required by your notice as far as that information is within my knowledge.

Signed [Signature] Date 5/9/08

**SCHEDULE**

1. What is the name and address of the occupier? ..... ~~REDACTED~~
2. Are the land or premises held by the occupier .....
  - 2.1 on a weekly tenancy? .....
  - 2.2 on an agreement. If so for what period? ..... N/A
  - 2.3 on a lease. If so, for what term? .....
3. What is the name and address of the person to whom rent is paid? .....
  - 3.1 Is he an agent for another person? ..... N/A
  - 3.2 What is the name and address of the other person? .....
4. What is the name and address of the freeholder? ..... AS ABOVE (1)  
(owner of the property) .....
5. What is the name and address of the leaseholder? ..... N/A
6. What is the name and address of any other person having an interest in the land or premises (other than those already specified) ..... N/A

PLEASE RETURN THIS FORM WITHIN 21 DAYS FROM THE DATE OF SERVICE OF THESE REQUISITIONS TO THE ADDRESS OF THE AUTHORITY GIVEN ON THE FRONT PAGE

**PLANNING COMMITTEE – 13 January 2009**

**REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES**  
**RE: APPEALS LODGED AND DETERMINED**

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1. **PURPOSE OF REPORT**

To inform Members of appeals lodged and determined since the last report.

2. **RECOMMENDATION**

That the report be noted.

3. **BACKGROUND TO THE REPORT**

3.1 Appeals Lodged

3.1.2 Appeal lodged by Mr Matthew Scott against the refusal of planning permission (08/00963/FUL) for the erection of one dwelling house at 21 Adrian Drive, Barwell (written representations).

3.2 Appeals Determined

3.2.1 Appeal at the Gatehouse, Cadeby Lane, Cadeby, lodged by Mr Knott has been withdrawn.

4. **FINANCIAL IMPLICATIONS (AB)**

4.1 It is anticipated that all the costs incurred and costs recovered will be met from existing budgets.

5. **LEGAL IMPLICATIONS (MR)**

5.1 None

6. **CORPORATE PLAN IMPLICATIONS**

This document contributes to Strategic Aim 3 of the Corporate Plan.

- Safer and Healthier Borough.

7. **CONSULTATION**

None

8. **RISK IMPLICATIONS**

None

9. **RURAL IMPLICATIONS**

None

10. **CORPORATE IMPLICATIONS**

By submitting this report, the report author has taken the following into account:

- |                                 |                              |
|---------------------------------|------------------------------|
| - Community Safety implications | None relating to this report |
| - Environmental implications    | None relating to this report |
| - ICT implications              | None relating to this report |
| - Asset Management implications | None relating to this report |
| - Human Resources implications  | None relating to this report |
| - Voluntary Sector              | None relating to this report |

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Background papers: Appeal Decisions

Contact Officer: Sarah Humphries ext 5680

**PLANNING COMMITTEE - 13 JANUARY 2009**

**REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES**

**RE: APPEALS PROGRESS**

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**1. PURPOSE OF REPORT**

- 1.1 To inform Members of the progress on appeals - details of which are attached.

**2. RECOMMENDATION**

- 2.1 The report be noted.

**3. FINANCIAL IMPLICATIONS**

- 3.1 None

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Background Papers:

Contact Officer: Tracy Darke, extension 5692

## PLANNING APPEAL PROGRESS REPORT

SITUATION AS AT: 02.01.09

**WR - WRITTEN REPRESENTATIONS**

**IH - INFORMAL HEARING**

**PI - PUBLIC INQUIRY**

FILE REF	CASE OFFICER	APPLICATION NO	TYPE	APPELLANT	DEVELOPMENT	SITUATION	DATES
08/00020/PP	SH	08/00963/FUL	WR	Mr Matthew Scott	21 Adrian Drive Barwell	Start Date Statement Comments	08.12.08 19.01.09 09.02.09
08/00019/PP	SH	08/00657/FUL	WR	Perfect Pizza	7 Lawnwood Road Groby	Start Date Comments	07.11.08 09.01.09
08/00018/TREE	DB	08/00613/TPO	WR	Mr D A Simpson	19 Farm Road Barwell	Start Date Awaiting decision	29.09.08
08/00015/PP	JH	07/00157/COU	IH	Ms Lynn Bailey	Amblyn Stud Farm Hinckley Road Cadeby	Start Date Date Hearing	18.07.08 03.02.09

**PLEASE NOTE:** ALL LOCAL INQUIRIES MUST BE ARRANGED WITH DOE THROUGH THIS OFFICE

### **DECISIONS RECEIVED FOR THE FOLLOWING APPEALS**

08/00017/VCON	LF	08/00407/CONDIT	WR	Mr John Knott	Gate House Bed and Breakfast Cadeby Lane Cadeby	<b>WITHDRAWN</b>	<b>19.12.08</b>
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Rolling April - December 2008/09

### **Planning**

No of Appeal Decisions	Allowed	Dismissed	Split	Withdrawn	Officer Decision			Councillor Decision		
					Allow	Spt	Dis	Allow	Spt	Dis
17	3	11	1	2	1	1	10	2		1

**Enforcement**

<b>No of Appeal Decisions</b>	<b>Allowed</b>	<b>Dismissed</b>	<b>Split</b>	<b>Withdrawn</b>
4		3	1	1