

Appeals Panel

Agenda

Members of the Appeals Panel

The Panel will comprise the following 3 Members

Miss S Lawn (Chairman)
Mrs C H Bannock
Mr J J Emsell

The following District Councillors representing the area, and the Parish Council, have been invited to attend to present their views, if they wish
Mr F Wymark / Mr V Tapp – Wroxham Ward
Wroxham Parish Council

If any member wishes to clarify details relating to any matter on the agenda they are requested to contact the relevant Head of Service.

Date

Wednesday 19 September 2018

Times

9:30 am on site
10:15 am formal hearing

Place

On site at: 16 Keys Drive, Wroxham NR12 8SS
for site visit,

followed by formal hearing in:
John Mack Room
Thorpe Lodge, 1 Yarmouth Road
Thorpe St Andrew, Norwich

Contact

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@BDCDemServices

The Openness of Local Government Bodies Regulations 2014

Under the above Regulations, any person may take photographs, film and audio-record the proceedings and report on all public meetings. If you do not wish to be filmed / recorded, please notify an officer prior to the start of the meeting. The Council has a protocol, a copy of which will be displayed outside of each meeting room and is available on request.

**The Chairman will ask if anyone wishes to
film / record this meeting**

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P C Kirby
Chief Executive

	Schedule – 19 September 2018
09:30 am	Meet on site outside no: 16 Keys Drive, Wroxham NR12 8SS to inspect the tree.
10:15 am	Convene in the John Mack Room at Broadland District Council Offices, Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, NR7 0DU to determine the Order

Minutes of a meeting of the **Appeals Panel** held at Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew on **Thursday 5 April 2018** at **10:45am** when there were present:

Mrs C Bannock Miss S Lawn– Chairman Mr J Emsell

Also in attendance were:

- (1) Mr R Pantry and Miss R Cole – 53 Silk Mill Road, Hellesdon – Minute 14 - objecting
- (2) Mrs S Gurney – Chairman of Hellesdon Parish Council – Minute 14 - supporting
- (3) Mr R Grady - Hellesdon Parish Council – Minute 14 - supporting
- (4) Mrs Prutten - Hellesdon Parish Council – (Hellesdon site visit only)
- (5) Mr Peter Jefferson – 2 Truman Close, Salhouse – Minute 15 - objecting
- (6) Mr Jeans – owner of land at Howlett's Loke, Salhouse on which the trees were situated – observing (Salhouse site visit only)
- (7) The Conservation Officer (Arboriculture & Landscape) presenting the case for the Orders
- (8) The Committee Officer (DM) – advisor to the Panel

12 APOLOGY FOR ABSENCE

An apology for absence was received from Mrs L Hemsall.

13 MINUTES

The Minutes of the meeting held on 16 January 2018 were confirmed as a correct record and signed by the Chairman.

14 THE BROADLAND DISTRICT TREE PRESERVATION ORDER 2017 (NO: 21) 47 – 53 SILK MILL ROAD, HELLESDON, NORWICH NR6 6SJ

The Panel had previously visited the site at 9:30am to inspect a group of 9 Silver Birch trees shown as G1 on the map attached to the Tree Preservation Order (TPO). Following introductions, those present (as listed above) were invited to point out anything they wished the Panel to observe whilst on site but not to discuss the merits or otherwise of the making of the Order as this would take place at the hearing.

Members viewed the trees from Silk Mill Road and from within the garden of 53 Silk Mill Road. They noted the proximity of the trees to the house and a large branch extending from one of the trees. They also noted that remedial work had been done to the trees to lift their crowns and reduce their canopies prior to the sale of the new houses.

The Panel then convened at 10.45am to consider the objections to the TPO. Those listed above were present. The Chairman invited those present to introduce themselves and then outlined the procedure to be followed.

The Panel noted that the Council had made the decision to safeguard the trees as it was felt they were at risk of being removed or inappropriately lopped. The 9 Birch trees formed a linear group within the rear gardens of the new build properties recently completed by the builders Lovells, following the granting of planning permission no.20141134. The Council decided to make the TPO to safeguard the significant visual amenity and biodiversity value offered by the group of Silver Birch, to the immediate area and the wider environment.

One objection to the Order had been received from Mr R Pantry and Miss R Cole of 53 Silk Mill Road.

The Panel then heard from Miss Cole who stated that they wanted to retain the option to maintain the trees without having to seek permission from the Council each time. They were concerned about the trees and the damage they could cause if they fell. In the summer when the trees were in leaf, they felt they would lose sunlight in their garden. They did not want to cut the trees down but wanted the freedom to maintain them. They confirmed they had moved into the property in January 2018.

The Conservation Officer presented the case for making the Order. He explained the background to the making of the Order as detailed above. A number of trees had been removed from the site to allow for the development and the Council had worked with the developers to retain some of the more important boundary trees which helped provide screening and softened the landscape and discussions had taken place regarding protecting the trees. The trees were in a safe condition and had a reasonable lifespan remaining. Some remedial work had been carried out in liaison with the developers to lift the canopies and allow for the creation of the fenced boundary to the properties. The end weight of some branches had also been reduced. The Council had a duty in accordance with the Town and Country Planning Act to protect significant trees as part of the planning process. He acknowledged the desire of the owners to have the freedom to maintain the trees but commented that the Order was made to safeguard the future of the trees and ensure that any maintenance work proposed was controlled and reasonable. He contended that the trees had significant visual amenity, had a life span of at least 20 years, had no defects and were not at risk of failing. With appropriate pruning they could be retained with minor inconvenience.

In response to questions, the Conservation Officer stated that the Council had up to 8 weeks to determine a request for works to a tree following receipt of a completed application form. The objectors commented that if they were to submit an application at the beginning of the summer because of the loss of sun, the summer would be over before they received permission to carry out the works. The Conservation Officer commented that there would be a need to plan ahead with proposed work and that it might be helpful to leave them for a year to see what impact, if any, they had on the garden. Maintenance work had recently been undertaken on the trees and there was little that needed to be done at the present time other than perhaps shortening the longer branch currently extending towards the roof. Any dead wood had been removed and the owners were at liberty to remove dead wood at any time. In response to a question as to whether the owners could carry out works themselves, the Conservation Officer confirmed that the decision notice issued following an application for works would detail the conditions for undertaking the work and that it needed to be in accordance with the British Standards and at the right time of the year. The owners of the tree would be responsible for the cost of any works undertaken. When asked what would happen if contractors did any damage, the Conservation Officer stated this rarely happened if the work was carried out by reputable, qualified contractors but that, should the tree fail because of inappropriate works, this was an offence which could result in the matter being considered through the Court and fines imposed.

It was confirmed that the developers were aware of the intention to protect the trees when they commenced the development. In response to a question about the layout of the development and the proximity of the houses to the trees, the Conservation Officer stated that officers had been involved in negotiations with the developers and the layout of dwellings had been amended to allow the tree line to be retained, but the viability of the development prevented any further allowances for the trees.

The Conservation Officer added that this species of tree did not have a dense canopy and would allow dappled sunlight through but would not facilitate uninterrupted sun. This matter should have been considered at the time the property was purchased.

The Panel then heard from Mrs S Gurney, Chairman of Hellesdon Parish Council who made reference to the Hellesdon Neighbourhood Plan which sought to preserve trees as part of developments. The Neighbourhood Plan, which had since been adopted, had been in preparation at the time the application for development of this site was submitted and all parties were very aware of the desire to retain the trees on this site. The trees were shown on the plans available in the site office available to prospective purchasers. The purchasers should have been aware of the intention to retain the trees. The Parish Council supported the confirmation of the Order.

In response, the objectors stated they were first time buyers and not as informed as perhaps they could have been. They were told by a lady in the site

office when they commented about the trees to just cut them down. Mrs Gurney commented that having regard to the orientation of the property, the main shading of the garden would be caused by the house itself and not the trees.

Mr Grady of Hellesdon Parish Council echoed the comments of Mrs Gurney, emphasising the need to protect and enhance the green infrastructure in the parish in accordance with the Hellesdon Neighbourhood Plan. He also felt shading in the garden was more likely to result from the house than from the trees and he urged the Panel to confirm the Order.

The Conservation Officer, together with the objectors and the supporters, then left the room whilst the Panel considered the objections and made its decision. They subsequently re-joined the meeting and were advised that, having listened carefully to all the evidence put before it and having regard to the criteria for making the Order, the Panel had agreed that the Order should be confirmed.

The reasons for the decision were that the criteria for making the Order had been met, the trees added significantly to both the biodiversity and visual amenity value of the local area, they were not considered to be in an unsafe condition at this time, they had a reasonable life span of at least twenty years and would not cause an increase in nuisance which would be considered unreasonable or impractical to abate in the future.

Accordingly, it was

RESOLVED:

to confirm the Broadland District Tree Preservation Order 2017 (No: 21) without modification.

**15 THE BROADLAND DISTRICT TREE PRESERVATION ORDER 2017 (NO: 22)
LONGACRE, HOWLETT'S LOKE, SALHOUSE, NORWICH NR13 6EX**

The Panel had previously visited the site at 10:15am to inspect a group of Silver Birch trees shown as G1 on the map attached to the Tree Preservation Order (TPO). Following introductions, the Chairman invited those present (as listed above) to point out anything they wished the Panel to observe whilst on site but not to discuss the merits or otherwise of the making of the Order as this would take place at the hearing.

Members viewed the trees from within the garden of no 1 Truman Close at the request of the objector Mr Jefferson from no 2 Truman Close who confirmed the owner had consented to access to the garden. Members viewed the proximity of the trees to the bungalow at no. 1, noting that there were 6 trees

still remaining and not 8 as stated in the Order. Their attention was drawn to the moss on the roof of the bungalow and the limited light in that part of the garden. Members then viewed the trees from within the garden of no. 2 and their attention was drawn to the moss on one end of the bungalow roof. They were also asked to note that improvement works had been carried out to the bungalow (installation of specialist air bricks) to help deal with the issue of damp within the rooms of the bungalow caused by water running down the walls from overflowing drainpipes blocked by the leaves/seeds from the trees.

The Panel then convened at 11.45am to consider the objections to the TPO. Those listed above were present. The Chairman invited those present to introduce themselves and then outlined the procedure to be followed.

The Panel noted that the Council had made the decision to safeguard the trees as it was felt they were at risk of being removed. Enquiries had been made about a new access on a new build plot which could affect trees T1 Beech and T2 Oak. The Council decided to make the TPO to safeguard the significant visual amenity and biodiversity value offered by the group of Silver Birch and T1 Beech and T2 Oak, to the immediate area and the wider environment. It was noted that the Order had been drafted based on the number of Silver Birch trees shown in the Tree Survey provided as part of the planning application. At the time of serving the Order, only 6 of the original 8 Silver Birch trees remained.

One objection to the inclusion of the Silver Birch trees (G1) in the Order had been received from Mr P Jefferson of no. 2 Truman Close, Salhouse.

The Panel then heard from Mr Jefferson who stated his main objection related to the nuisance the Silver Birch trees caused to the two properties at no. 1 and no. 2 Truman Close. He did not feel the trees had any public benefit and did not contribute to the landscape. They were obscured from view from Howlett's Loke and were not visible from Station Road. He also suggested the trees did not have a remaining life expectancy of at least 20 years and felt this was more like 10 – 20 years. The trees caused problems with damp and mould on internal walls of the properties and the only time the north facing wall benefitted from direct daylight was for a short period at dawn. The trees prevented any sun from reaching the north side of the bungalows, keeping them cool and damp and this environment caused the moss on the roof. The 2 bedrooms on the north side of the bungalow were dark and shaded and suffered with mould and damp in the wardrobes. The leaves/seeds blocked the guttering and caused rain to run down the walls. Figures provided by the Royal Horticultural Society suggested that the Silver Birch trees shed 200,000 leaves and 5.9million seeds per kg. Improvements in the extent of the damp and mould had been seen when a number of the Silver Birch trees running along the boundary of no. 2 had been removed. Specialist blocks had also been installed in the walls to help deal with the damp. Mr Jefferson was fearful the trees could fall and cause damage to the two bungalows or the new property to be built on Howlett's Loke and could cause serious injury. He stated that Mr Jeans was

happy for a compromise which involved removal of the trees and replanting alternative trees. Mr Jefferson made reference to the report from Robert Thackray Ltd dated 2016 handed to him by Mr Jeans on site that morning who had carried out an assessment of the trees using the TEMPO method and concluded that the trees were not worthy of protection by an Order. An alternative would be to replace them with a different smaller species with landscape value, further away from the boundary line. Mr Jefferson then circulated copies of photos showing the damp treatment, the internal mould, the moss on the roof and the shading caused by the trees.

The Conservation Officer commented that the TEMPO method was one not used by the Council for the assessment of the quality of trees as it relied on numerical values to assess the trees. The Council had agreed the method to be used to assess the value of trees a number of years ago which included the criteria set out in the report and this was the Council's preferred method of assessment.

In response to a question, Mr Jefferson confirmed that the bricks installed in the wall had helped to improve the damp situation but with a heavy downpour they still had a problem with mould. The problem with the leaves/seeds blocking the guttering and downpipes still existed and the removal of the extended line of trees had helped this situation.

The Conservation Officer then presented the case for making the Order. He explained the background for the making of the Order and that the Council had a duty under the Town and Country Planning Act to protect and safeguard trees when granting planning permission. Discussions had taken place with the planning case officer and it was felt that the trees were under threat and needed to be protected. A number of trees in the area had already been felled. The Order had been prepared based on the arboriculture report commissioned by the landowner and since then, two trees had been removed.

The Conservation Officer stated that he was satisfied that the remaining 6 Silver Birch trees made a significant contribution to the biodiversity and visual amenity of the local area, were not unsafe and had a life expectancy of at least 20 years. With regard to being a nuisance, the Conservation Officer stated that the constraints plan contained within the agenda papers demonstrated the shadowing caused by the Silver Birch trees and most of the shadowing fell into land adjoining Mr Jefferson's plot (land owned by Mr Jeans – the owner of the trees). There would always be an element of direct overshadowing and loss of direct light because of the proximity of the Silver Birch trees. There was no engineering evidence which specifically explained the cause of the damp and there were a number of possible explanations for the damp including the construction of the bungalows and the damp proof course. Other elements could contribute to the cause of damp and he did not feel the Silver Birch trees were the cause of the mould growing inside the property. With regard to the moss on the roof, this could be seen on all aspects of the roof and other roofs in the area.

The Conservation Officer then answered questions. He confirmed that there was always a risk that trees could fail but there was no evidence that the Silver Birch trees were compromised in any way to make them any more likely to fall. If a tree became unsafe it could be removed with the necessary consent. The potential risk of the Silver Birch trees failing was such that it did not warrant their removal in case. He also acknowledged that leaf guards could be installed on guttering/down pipes to help control leaf/seed debris. Mr Jefferson commented that there would still be a significant amount of leaf/seed debris. The Conservation Officer confirmed that he was not aware when or how the 2 Silver Birch trees had been removed.

The Conservation Officer, together with the objector, then left the room whilst the Panel considered the objections and made its decision. They subsequently re-joined the meeting and were advised that, having listened carefully to all the evidence put before it and having regard to the criteria for making the Order, the Panel had agreed that the Order should be confirmed.

The reasons for the decision were that the criteria for making the Order had been met, the trees added significantly to both the biodiversity and visual amenity value of the local area, they were not considered to be in an unsafe condition at this time, they had a reasonable life span of at least twenty years and would not cause an increase in nuisance which would be considered unreasonable or impractical to abate in the future. Noting the orientation of the properties, Members did not feel that removal of the trees would resolve the issue of damp inside the properties.

Accordingly, it was

RESOLVED:

to confirm the Broadland District Tree Preservation Order 2017 (No: 22) subject to a modification to reduce the number of Silver Birch trees protected from 8 to 6 to reflect the actual number of trees remaining.

The meeting closed at 11:45am

Quasi-judicial procedure rules

Appeals lodged against the making of tree preservation orders (TPOs)

The panel comprises three district councillors. At least two members of the panel must be present at each hearing.

Notes on procedure

1. Site Visit

- 1.1 On the day of the hearing, members of the appeals panel visit the site to inspect the trees subject of the appeal.
- 1.2 Members of the public, local parish council/district council ward representatives, council officers directly involved in the preparation of the TPO, and the objector may attend this site inspection, but may not make representations to members of the panel.

2. The Hearing

- 2.1 The hearing itself is informal and the order for proceedings is as follows:
 - (1) All parties assemble at the council offices.
 - (2) The chairman of the panel formally opens the hearing.
 - (3) The objector is asked to put his case for appealing against the making of the order and to call any witnesses in support of his case.
 - (4) The objector (if he gives evidence as opposed to an opening address) and/or any witnesses called, are then questioned on their statements by the officer representing the council as an advocate.
 - (5) The chairman of the panel invites members of the panel to ask the objector or his witness any questions which they consider relevant to the appeal, having heard the objector's case for appealing against the order.
 - (6) The council's advocate introduces the council's case for the making of the order and then calls other officers as witnesses, who can then be questioned by the objector.
 - (7) The chairman of the panel invites members of the panel to ask the council's witnesses any questions they consider relevant to assist them in deciding whether or not the order should be confirmed, modified or not confirmed.
 - (8) The chairman then asks if any parish council representative, or any district councillor (who is not a member of the panel) or member of the public present, wishes to say anything to the panel. If a parish council representative, district councillor (who is not a member of the panel) or member of the public does make a statement then he can be questioned by the representative of the party to whom that statement is adverse and then by members of the panel. Each statement will be fully dealt with, including questioning of its maker, before the next statement is dealt with.
 - (9) The council's advocate and then the objector are requested to make their respective closing statements.
 - (10) The panel then deliberates in private.

- (11) During its deliberations the panel will be advised on procedural matters by the chief executive or his appointed representative.
- (12) Once the deliberations are concluded the panel's decision is formally announced to interested parties.
- (13) The chairman will advise the objector of rights of appeal, as follows:

If any person is aggrieved by a local authority's confirmation of a Tree Preservation Order, they may, within 6 weeks of that confirmation, apply to the high court under section 288 of the Town and Country Planning Act 1990, for an order quashing or (where applicable) suspending the order, either in whole or in part. The grounds upon which such an application may be made are that the order is not within the powers of that Act or that any relevant requirements have not been complied with in relation to that order.

STATEMENT OF CASE

Tree Preservation Order 2018 No. 4 (1287)

Address: 16 Keys Drive, Wroxham, Norfolk, NR12 8SS

BACKGROUND TO THE MAKING OF TPO 2018 No. 4

Provisional TPO 2018 No. 4 was made on 27 June 2018 by Broadland District Council. The Order covers one Oak tree to the rear of 16 Keys Drive, Wroxham.

The Council received a planning application (reference number 20180755) proposing a single storey rear extension. A document submitted with this application (Dwg No P_001 Existing Plans) showed three trees near to the rear of the property namely T1 (species unknown), T2 Oak (the subject of this Order) and T3 Oak which stands within the curtilage of the neighbour's property at 14 Keys Drive. This planning document stated that "Trees referenced T1 & T2 to be removed. Both do not have preservation orders".

The Council's Assistant Conservation Officer was consulted on the planning application with consideration to the arboricultural implications of the proposed rear extension and through this process became aware of the applicant's intention to fell the Oak tree in question. After a period of desk based research a site visit was undertaken and it was found that the Oak is an important mature tree that forms part of an old field boundary to the south of Keys Drive.

The Council decided to make the above TPO in order to protect the Oak, which is considered to have significant amenity value, for the reasons stated within the Regulation 5 Notice shown below:

The Council has made the order to safeguard the significant visual amenity and biodiversity value offered by the tree to the immediate area and wider environment.

THE CASE FOR MAKING TPO 2018 No. 4

Taking the above points into consideration, please note the following:

How does the tree, the subject of this report, make a significant contribution to the local environment?

The Oak tree makes a significant contribution to the local environment by representing a historical link to the previous agricultural landscape. This Oak, along with the many other Oaks that stand in a line to the south of properties on Keys Drive, forms part of an old field boundary that dates back to at least the 1880s and is visible on the first edition Ordnance Survey map from this time (see Figure 1 below). Notably, a number of other Oaks to the rear of 24, 30, 34 and 48 Keys Drive are already protected by TPO 2010 No. 73.

Together the Oaks preserve this valuable historical boundary feature whilst also serving as a green backdrop to the properties on Keys Drive and a buffer to the agricultural field to the south.

The Oak tree in question is visible from Keys Drive and can also be viewed from Salhouse Road where it serves as to screen the residential development.

Figure 1: Image of Norfolk County Council's Historic Map of Wroxham showing the field boundary Oaks mapped on the 1st Edition Ordnance Survey (1879-1886)



Field Boundary Oaks

Is there a reason to fear that the tree may be dangerous?

There has been no evidence presented to suggest that the tree is dangerous. The tree is leaning, however leaning trees are common and not inherently dangerous; there are many Oak trees which live safely with a lean for hundreds of years.

What is the expected lifespan of the tree, barring unforeseen circumstances?

The Oak tree is a mature specimen which barring unforeseen circumstances would live for many more hundreds of years.

Does the tree, in its present location, show signs of causing a nuisance in the future which is unacceptable or impractical?

It is not considered that the tree currently poses or would pose a nuisance that is unacceptable or impractical. The tree is situated at the bottom of the garden and is leaning away from the property resulting in the majority of the canopy being over the adjacent agricultural field rather than the garden of 16 Keys Drive.

The tree does stand close to the boundary line of the garden and the appellant has argued in their objection letter that this prevents the installation of a fence. It is considered that a fence can be installed near to the tree if the roots are worked around and a number of fence panels were shortened to allow the tree to lean through the fence line.

How does the tree contribute to the biodiversity of the immediate area and/or offer a habitat for wildlife?

The tree is an Oak which is a native species highly regarded for its ability to provide a home to a wide variety of species through the provision of acorns as a food source and deadwood habitat for bats, birds, invertebrates and fungi. The English Oak in particular is prized as a national symbol for strength and survival and enjoys a special place in our cultural folklore and heritage.

This particular tree's location between a residential development to the north and an agricultural field (currently cultivated as a monoculture) to the south means that it provides a welcome refuge for wildlife. It also exists as part of a network of Oaks that link up to Keys Hill Woods in the north east which allows species to migrate through the residential development from the woodland.

OBJECTION AND TREE OFFICER'S RESPONSE:

One objection to **TPO 2018 No. 4** was made on the **3 July 2018** by:

Mr and Mrs R Kavanagh-Read of 16 Keys Drive, Wroxham, NR12 8SS

Tree Officer responses to these objections are:

Objection 1: "Our reasons for objection to the above points are as follows:

- **Safeguard the significant visual amenity**

As you will note from the plans the council have provided, the tree in question is within our back garden of 16 Keys Drive, Wroxham, NR12 8SS. I have inserted pictures below of the trees position [please see page 1 of the objection letter] from the roadside at the front of our property. You will note that both our property and the surrounding properties restrict the view of the tree and only the top of the tree can be seen by the public from the roadside outside our house. "

Response: The planning practice guidance for Tree Preservation Orders states that there are many factors which may mean that a tree provides "amenity". These can include:

- *being visible from a public place such as a road or footpath*
- *being of a certain size*
- *rarity, cultural or historic value, and*
- *contribution to the landscape*

*The Oak in question meets all these amenity criteria. The tree is visible from Keys Drive and due to its size and place on the skyline it can be seen from public footpaths and roads such as Salhouse Road. The tree also has historic value by providing a link to the previous agricultural use of the land, and a significant size with a stem diameter of **Xcm**.*

Objection 2: "You will see the stem angle of the tree is completely off centre, the crown is sparse and the tree has a heavy lean towards the field. We have been trying to be safe and cover 'our' duty of care under the occupier's liability act by removing the tree. Should our appeal for the Tree Protection Order be rejected we will not be financially responsible and Broadland District Council will accept the conditions to pay any costs in full should this tree fall or if any remedial work must take place due to our financial situation and having our first baby."

Response: The presence of a lean does not inherently make the tree dangerous and no evidence has been submitted to suggest otherwise. Many Oak trees persist with a stable lean for hundreds of years. The large diameter of the trunk relative to the height of the crown also confers greater strength to

this particular specimen which leans towards an agricultural field with few targets.

It should be noted that Broadland District Council would not take on financial responsibility for the tree as a result of the Tree Preservation Order.

The duty of care under the Occupiers Liability Act 1957 refers to land owners taking “reasonable care to avoid acts or omissions which he or she could reasonably foresee may result in harm or injury”. In terms of trees this means consulting a professional arborist when a problem arises with the tree in an effort to mitigate any risk. The tree does not need any major works at this time and most trees do not require regular work except perhaps when in close proximity to man-made structures. Regular checks of the tree on a 3-5 yearly basis by a professional arborist would not pose an excessive financial burden; many tree surgeons carry out preliminary appraisals free of charge.

Objection 3: The tree is not the greatest of specimens and we have inserted pictures below to indicate this [page 4-6 of the objection letter]. You will see that the tree has areas where it is showing little life, it has already been heavily pruned by the previous owners who had ongoing concerns of the safety of the tree and therefore giving the tree a shorter lifespan.

Response: The crown of the tree has been previously pruned with wound locations suggesting the removal of a lower branch which has lifted the crown to facilitate views of the field and increased sunlight. Some historic pruning points are also visible within the crown however these are not immediately obvious to passers-by and do not detract from the visual amenity value of the tree. Oak is very resilient as it forms durable heartwood that resists decay as pruning points, it is therefore unlikely that the previous pruning has significantly shortened the lifespan of the tree on a timescale that is relevant for the current residents.

Objection 4: “We have inserted a picture from our garden view and a zoomed in picture from Salhouse Road [page 7 of the appellant’s objection letter]. You will note our neighbours tree (no 14’s) and see the difference in the canopies is remarkable and how sparse our tree is.”

Response: The difference between the density of the canopies of the Oak at 14 Keys Drive and the Oak in question at 16 Keys Drive is not significant in arboricultural terms and it does not impact on the amenity value of the tree.

Objection 5: “You will see from the below picture [page 8 of the appellant’s objection letter] the field behind the tree is a farmer’s field used for crops. There is no public access to this field, and the roads surrounding the field are covered by hedges which are higher than head height for an average adult with no public footpaths allowing the public to see the tree. Therefore, the tree could only be seen by high vehicles driving past.”

Response: In a similar vein to the Council's response to Objection 1 the Tree Preservation Order guidelines state that "trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public".

This guidance demonstrates that public access to a tree is not a requirement for a Tree Preservation Order. The public visibility criterion is met by the views of the tree from Keys Drive and from Salhouse Road as demonstrated by the appellant's photographs. It is important to note that public visibility alone is not the only contributor to the amenity value of the tree, its value for biodiversity and as a historic landscape feature are also recognised factors.

Objection 6: "The Tree Protection Order ensures we provide root protection to the tree. This would be around 12-15-meter radius. Our garden is 14.6 meters by 12.8 metres. This means we will need to consider the roots to the tree if we want to look to do anything within our garden. This will include safeguarding these when we look to build our proposed extension. "

Response: The retention of the Oak tree would not prevent the single storey rear extension proposed by planning application 20180755. The Oak tree is situated at the back of the garden and its stem would be approximately 9m away from the closest edge of the proposed extension. The Root Protection area of the tree has a radius of Xm and therefore the roots of the Oak tree may just extend into the extension's foundation area. The edge of the canopy would be Xm away from the extension.

A Tree Protection Plan would be needed to ensure that the tree is properly protected throughout the construction period and this would include details of how any roots extending into the foundation area will be pruned back sympathetically. Large diameter roots in the proposed extension area are unlikely to be present in great numbers due to the distance from the tree and the hard standing patio that already exists on the area.

Objection 7: "As you will see from the picture inserted above and pictures inserted below [page 8 & 9 of the appellant's objection letter] the safety of our child, future children and children who regularly visit our property is at risk. The field is a working field therefore has heavy machinery operated in it throughout the year to harvest the crops. The tree and its imposing roots are currently preventing us from putting up a fence to safeguard the children by entering the field. If the appeal is rejected and if anything was to happen we will hold the council liable due to their acknowledgment of putting a Tree Protection Order in place over the priority of human safety and will pursue legal action against them for failure to allow us to provide a safe environment to our home."

Response: It is not considered that the tree is preventing the erection of a fence or boundary that would enable the appellant to secure their garden. A

fence could be installed to the south of the tree by working around the roots and making a gap at the top of the fence to allow the tree to lean through. This is a common solution to the problem of trees on boundary lines.

Objection 8: “The tree will regularly have fallen twigs, sticks and branches both large and small fall. The tree covers most of our garden and as you can see from the below picture we will find these can be sharp. Not only the sharp objects being on the ground for children to pick up, these will also fall at anytime. This worries us and impedes on safeguarding the children and makes us question if we feel comfortable allowing our children to play in the garden without the need for a consistent watchful eye.”

Response: Twigs, leaves and acorns falling from the tree is a natural and seasonal process. As a mature tree the Oak will produce some small deadwood as shown in the appellant’s picture on page 10 of their objection letter. The risk posed by deadwood is minimal and any large diameter deadwood could be removed at any time without the need for a tree works application under the exemption for deadwood. Even if the Oak in question were removed, debris from the adjacent Oak at 14 Keys Drive would still be present.

“Objection 9: The surrounding field has other trees of similar size, not to mention the Keys Drive Woodlands area which is a 3-5 minute walk down the road to our property which provides further biodiversity for the immediate area and wider environment without detriment to the safety of someone’s home (mainly ours) therefore the Tree Protection Order places undue hurdles in our way and mental health concerns in ensuring our home become a safe place to live.”

Response: The UK is one of the least forested countries in Europe with woodlands representing just 13% of land area in the UK relative to EU average of 37%¹. Consequently, the importance of smaller patches of woodland like the Keys Hill Wood is magnified for the species that depend on them. Connections between woodlands such as hedgerows and lines of mature trees like the Oak in question allow species to travel between woodlands and maintain larger and more resilient populations. Whilst Keys Hill Wood does provide a home for biodiversity, its value is somewhat dependent upon its linkages and its presence does not justify the felling of other trees in the vicinity.

¹ Woodland Trust (2011). The State of the UK’s Forests, Woods and Trees: Perspectives from the sector.

Objection 10: “Under the anti-social behaviour act we are allowed the right to light. The garden area is 14.6 meters by 12.8 meters. The tree already limits the natural light we have and with the extension this will limit the natural light within the extension once erected and the external area further. This provides further concerns for our mental wellbeing (on top of the security concerns we have) and the ability to enjoy the comfort of our home and garden.”

Response: There is no right to light with regards to individual trees. The Anti-Social Behaviour Act 2003 reference to light is in relation to the High Hedges Regulations which allow neighbours to lodge a complaint with their District Council regarding an overgrown evergreen hedge.

It is not considered that the Oak tree casts an excessive or unacceptable amount of shade. It has a high canopy that allows light to pass underneath and the canopy is compact for the age of the tree.

Objection 11: “To our knowledge no site visit by the council’s tree officer had taken place before they submitted the order. Our views when we received the order was that if a visit did take place then this would have been a very quick turn around (2 days) and the access to review the tree would have been without our consent or would have taken place on Salhouse Road which could not possible provide enough information needed to conclude that a protection order is required.”

Response: A site visit did take place on 26th June 2018 before the Tree Preservation Order was served in which the amenity value of the tree was assessed from various public viewpoints. Due to the imminent risk of felling a Tree Preservation Order was served quickly to prevent the works from taking place.

In emergency situations the Council can serve a TPO without a site visit due to the timescales involved with putting together the relevant documents.

CONCLUSION

The tree identified within the Provisional Tree Preservation Order (PTPO) adds significantly to both the biodiversity, visual amenity and historical value of the local area.

The tree is not considered to be in an unsafe condition at this time.

I do not believe the tree will cause an increase in nuisance which would be considered unreasonable or impractical to abate in the future.

This PTPO has been implemented and served in a just and appropriate manner. Therefore, I request that the Order is confirmed.

Considerations may also be made that the tree is not worthy of protection therefore a resolution is met to not confirm the Order.

Date: 10 September 2018

Tree Officer: Alex Lowe

THE CASE FOR MAKING A TREE PRESERVATION ORDER (TPO)

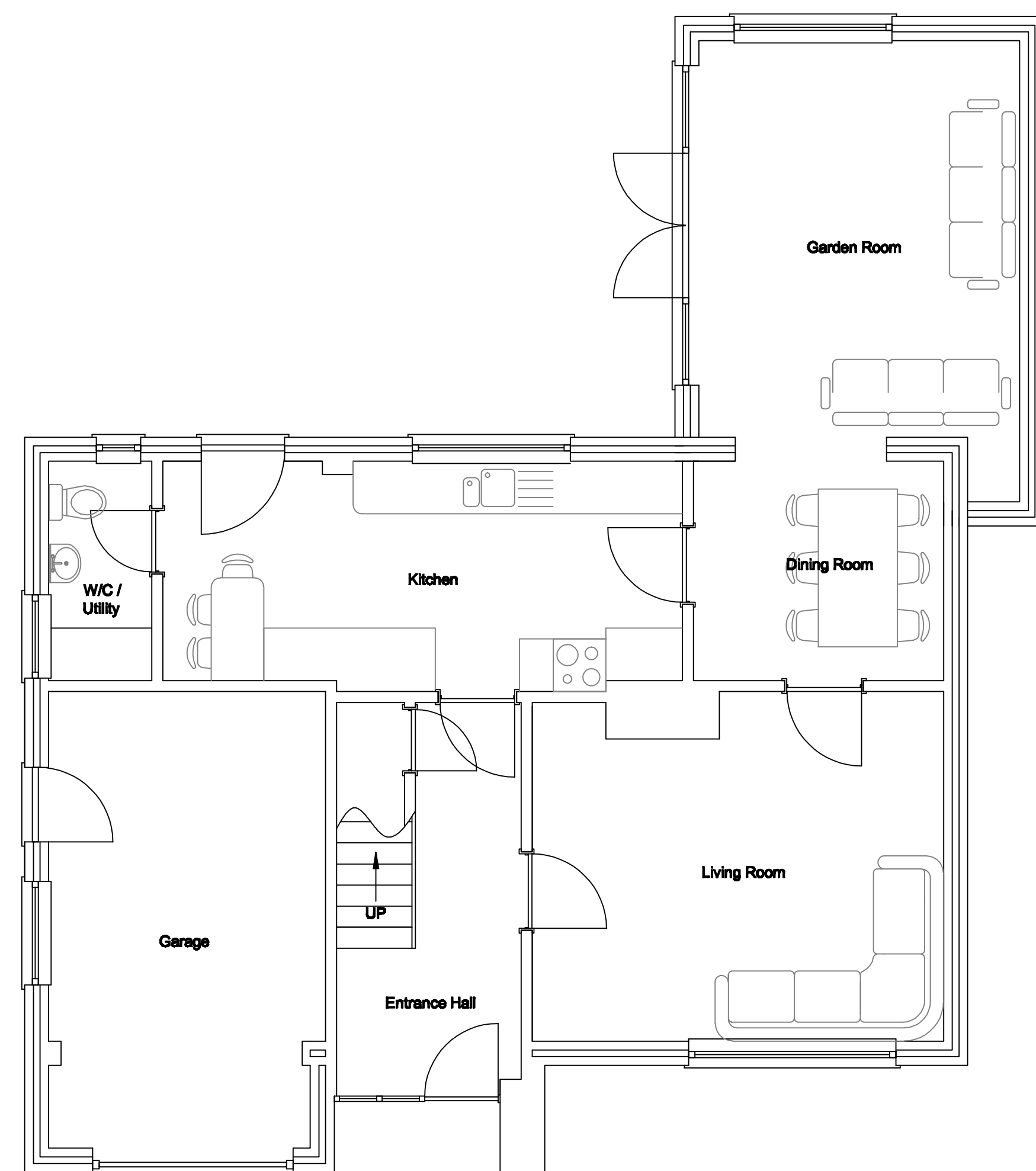
Within Chapter 8, Part VIII, Special Controls, Chapter I under Sections 197, 198 & 201 of the Town and Country Planning Act 1990 the Council has powers to protect and plant trees where it appears 'expedient in the interest of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order'.

'Amenity' is not defined in law, so authorities need to exercise judgement when deciding whether it is within their powers to make an order.

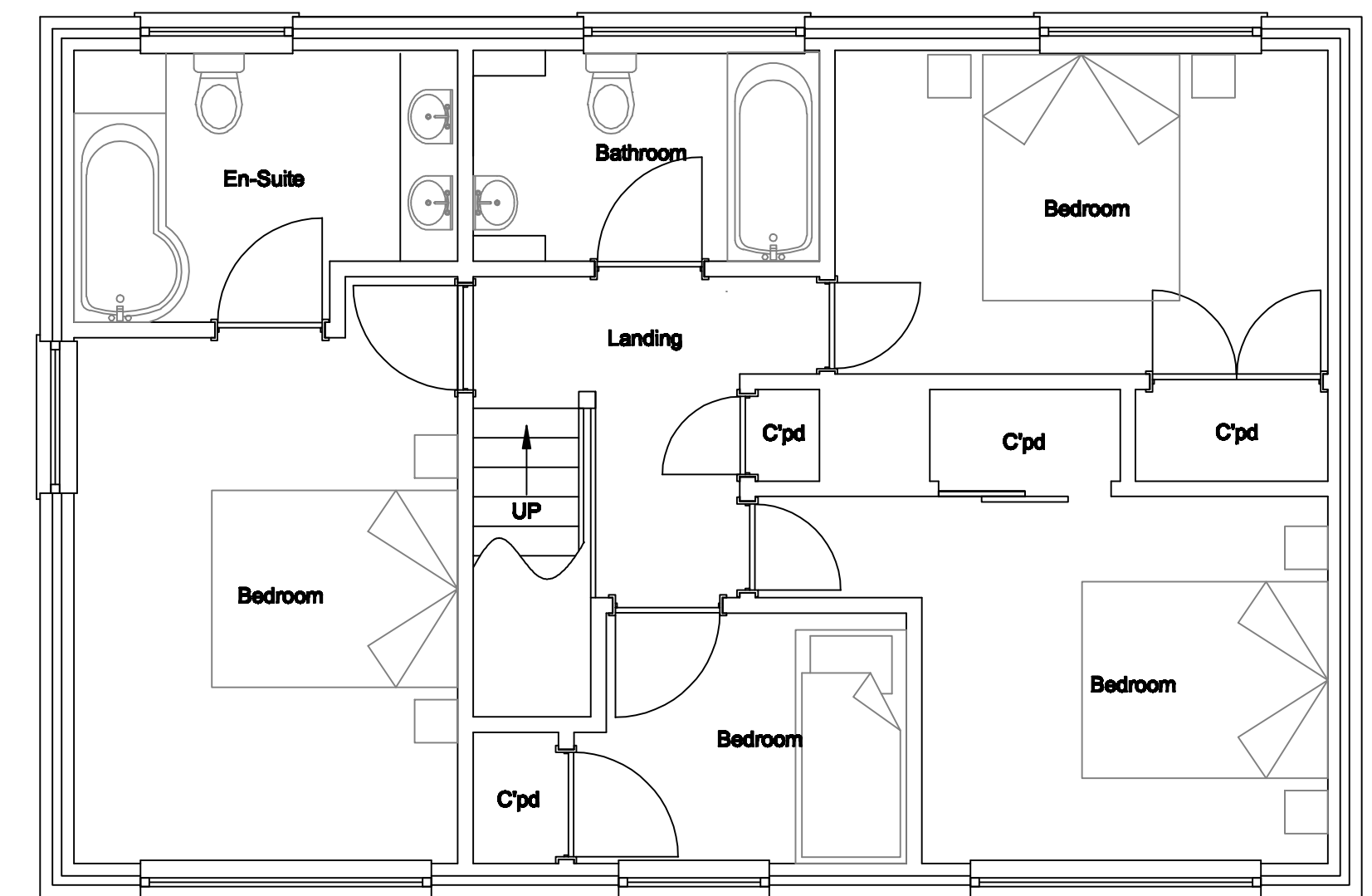
However, in March of 2014 the Department for Communities and Local Government (DCLG) issued a guide to all LPAs on TPOs entitled – Tree Preservation Orders and trees in conservation areas. This guide indicates that:

- A Tree Preservation Order is an order made by a local planning authority in England to protect specific trees, groups of trees or woodlands in the interest of amenity.
- An order can be used to protect individual trees, trees within an area, groups of trees or whole woodlands. Protected trees can be of any size or species.
- Local Planning Authorities (LPAs) should be able to show that a reasonable degree of public benefit in the present or future would accrue before TPOs are made or confirmed. The trees, or at least part of them, should normally be visible from a public place such as a road or footpath.
- The risk of felling need not necessarily be imminent before an Order is made. Trees may be considered at risk generally from development pressures or changes in property ownership, even intentions to fell are not often known in advance, therefore precautionary Orders may be considered to be expedient.
- The guidance also indicates that LPAs are advised to develop ways of assessing the 'amenity value' of trees in a structured way, taking into account the following criteria:
 - Visibility
 - Individual & collective impact
 - Wider impact
 - Other Factors
 - Size and form;
 - Future potential as an amenity;
 - Rarity, cultural or historic value;
 - Contribution to, and relationship with, the landscape; and
 - Contribution to the character or appearance of a Conservation Area.

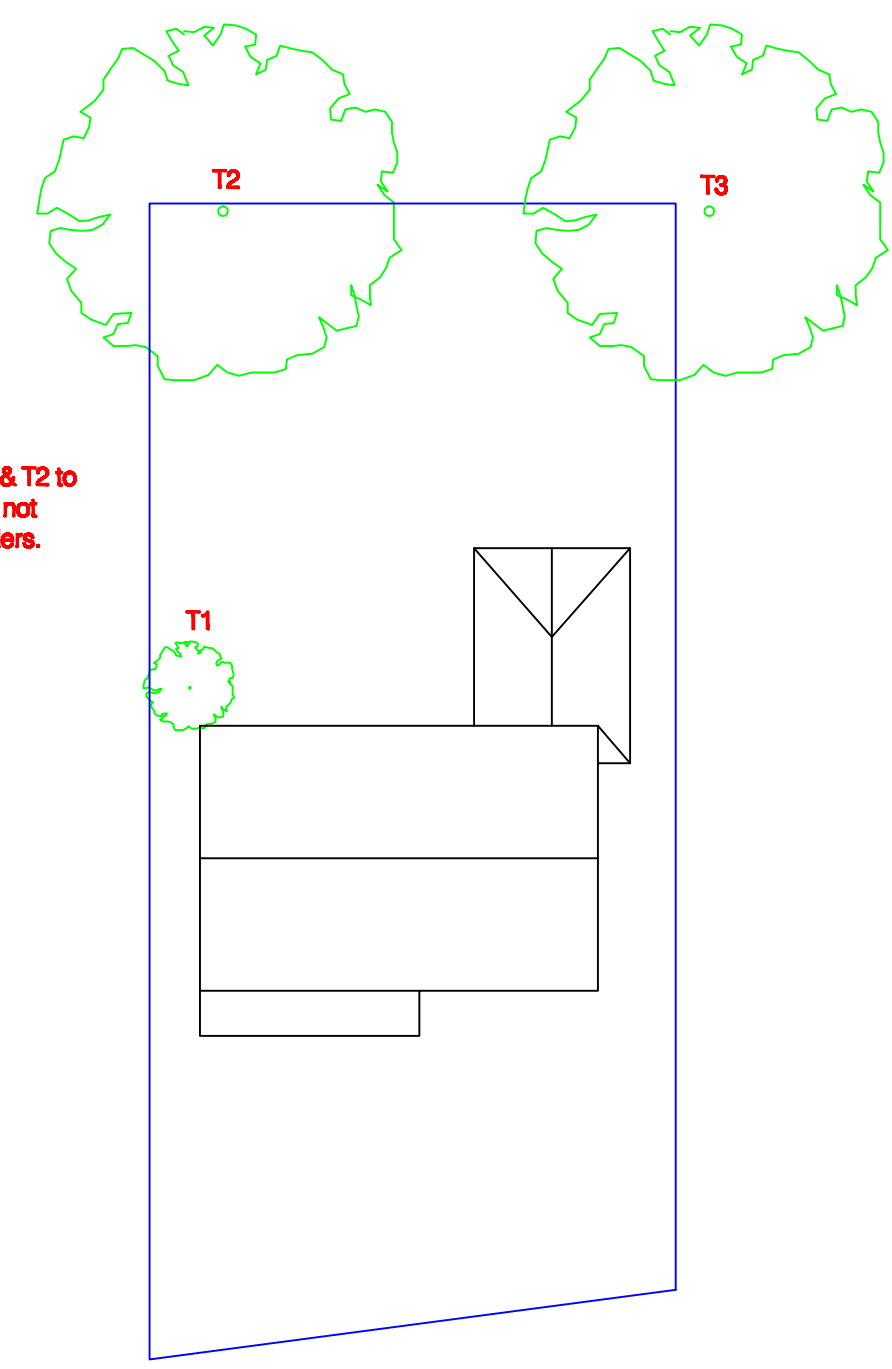
- Where relevant to an assessment of the amenity value of trees or woodlands, authorities may consider taking into account other factors, such as importance to nature conservation or response to climate change.
- The guidance further indicates that it is important to establish a consistent approach, therefore the following points are considered before recommending a TPO:
 - Does the tree that is the subject of this report make a significant contribution to the local environment?
 - Is there a reason to fear that any of the trees may be dangerous?
 - Can the trees be expected to live for longer than ten years, barring unforeseen circumstances?
 - Do the trees in their present locations show signs of causing a nuisance in the future which is unacceptable or impractical?
 - Do the trees contribute to the biodiversity of the immediate area and/or offer a habitat for wildlife?



Ground Floor Plan



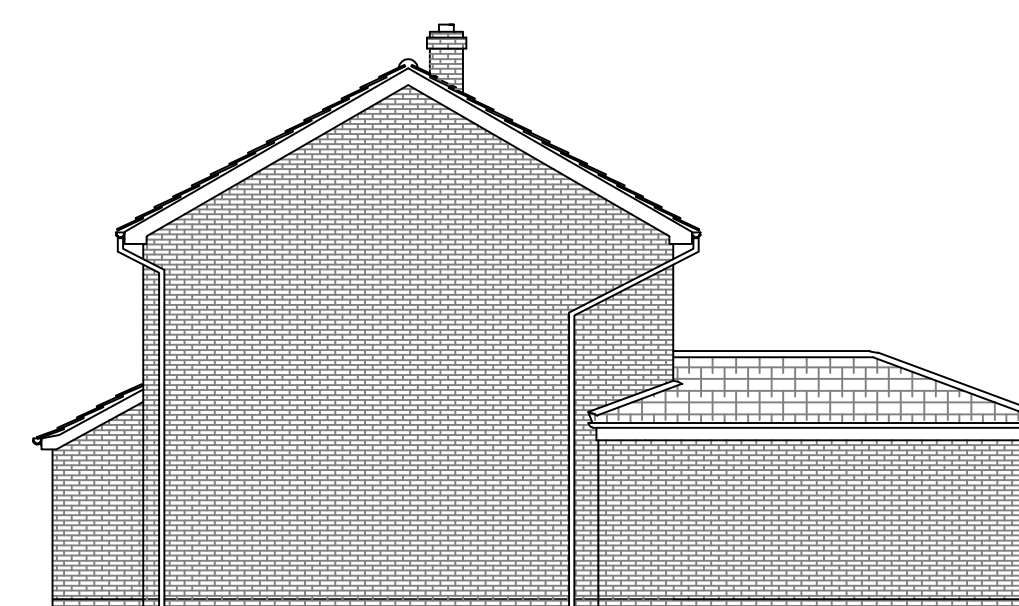
First Floor Plan



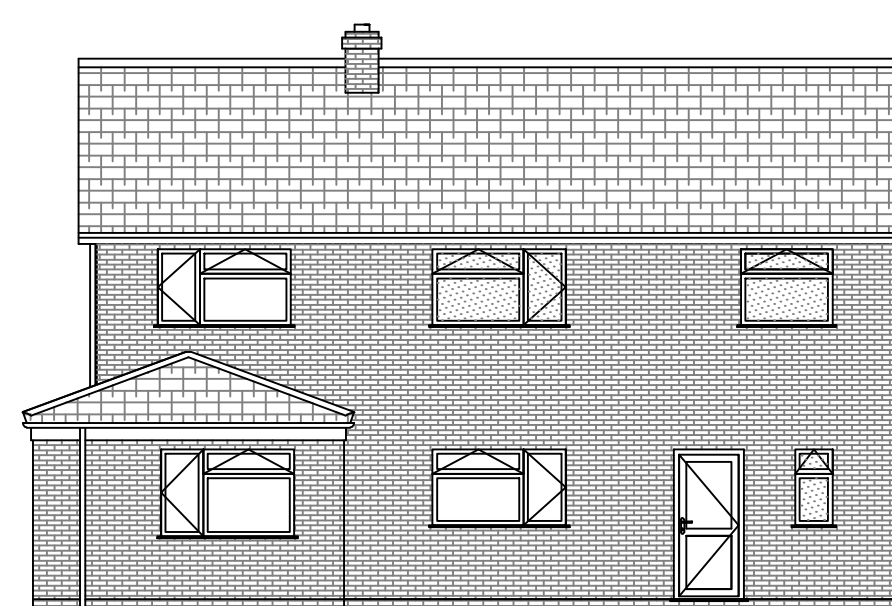
Tree Location Plan
(Scale 1:200)



Front Elevation



Side Elevation



Rear Elevation

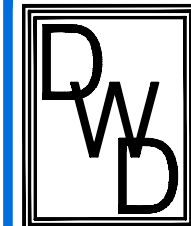


Side Elevation

**BROADLAND
DISTRICT COUNCIL**

08 May 2018
20180755

PLANNING CONTROL

Rev:	Description:	Date:	Initial:
<div><div>David Williams Designs3 Leonard Medler Way Hovingham NR10 5LE <small>Tel : 07954 870624 (mobile) Email : davidgerrywilliams@hotmail.co.uk</small></div></div>			
Client/Project: 16 Keys Drive Wroxham, Norfolk, NR12 8SS			
Drawing Title: Existing - Floor Plans and Elevations			
Drawn: D. Williams	Date: May, 2018	Scale: 1:20 1:100	Drawing No: P-001
Checked:	Contract No:	Job No:	Rev: --

Mrs K. Kavanagh-Reed
16 Keys Drive
Wroxham
Norfolk
NR12 8SS

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

Dear Mrs Kavanagh-Reed,

Town and Country Planning Act, 1990
Town and Country Planning (Tree Preservation) (England) Regulations 2012
The Broadland District Tree Preservation Order 2018 (No. 4)
To protect one Oak tree to the rear of 16 Keys Drive, Wroxham, Norfolk, NR12 8SS

The Council, as Local Planning Authority, has decided that it is expedient in the interests of amenity to ensure the preservation of a certain tree on land of which you are the owner.

It is deemed necessary to serve a Preservation Order to cover the Oak tree as set out in the First Schedule and Map of the attached Order, to ensure its protection.

The tree in question has been made the subject of a Tree Preservation Order under Section 198 of the Town and Country Planning Act, 1990. A copy of the Order is enclosed, together with a formal Notice of its making.

The Order is of immediate effect. You have the right to object or endorse the Council's actions in protecting trees within your Parish. Particulars are given in the formal Notice.

Yours sincerely

Mr P Courtier
Head of Planning

Owner/Occupier
18 Keys Drive
Wroxham
Norfolk
NR12 8SS

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

Dear Sir/Madam,

Town and Country Planning Act, 1990
Town and Country Planning (Tree Preservation) (England) Regulations 2012
The Broadland District Tree Preservation Order 2018 (No. 4)
To protect one Oak tree to the rear of 16 Keys Drive, Wroxham, Norfolk, NR12 8SS

The Council, as Local Planning Authority, has decided that it is expedient in the interests of amenity to ensure the preservation of a certain tree on land of which you are the owner and/or occupier of adjoining land on which the tree stands.

It is deemed necessary to serve a Preservation Order to cover the Oak tree as set out in the First Schedule and Map of the attached Order, to ensure its protection.

The tree in question has been made the subject of a Tree Preservation Order under Section 198 of the Town and Country Planning Act, 1990. A copy of the Order is enclosed, together with a formal Notice of its making.

The Order is of immediate effect. You have the right to object or endorse the Council's actions in protecting trees within your Parish. Particulars are given in the formal Notice.

Yours sincerely

Mr P Courtier
Head of Planning

Mr Michael Francis Trafford
The Wroxham Estate Office
Home Farm
Wroxham
Norfolk
NR12 8SY

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

Dear Mr Trafford,

Town and Country Planning Act, 1990
Town and Country Planning (Tree Preservation) (England) Regulations 2012
The Broadland District Tree Preservation Order 2018 (No. 4)
To protect one Oak tree to the rear of 16 Keys Drive, Wroxham, Norfolk, NR12 8SS

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The Order is of immediate effect. You have the right to object or endorse the Council's actions in protecting trees within your Parish. Particulars are given in the formal Notice.

Yours sincerely

Mr P Courtier
Head of Planning



Ask for	Alex Lowe
Direct Dial	01603 430560
Email	conservation@broadland.gov.uk
Our Reference	TPO 2018 No. 4 (1287)
Date	27/06/2018

Mr David Williams
3 Leonard Medler Way
Hevingham
Norfolk
NR10 5LE

Dear Mr Williams,

Town and Country Planning Act, 1990
Town and Country Planning (Tree Preservation) (England) Regulations 2012
The Broadland District Preservation Order 2018 No. 4 (1287)
To protect one Oak tree to the rear of 16 Keys Drive, Wroxham, Norfolk, NR12 8SS
Your Client: Mrs Kylie Kavanagh-Reed, 16 Keys Drive, Wroxham

Enclosed for your information are copies of a Tree Preservation Order, Formal Notice and letter, which have today been served on your client.

Yours sincerely

Mr P Courtier
Head of Planning

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990

TOWN AND COUNTRY PLANNING ACT (Tree Preservation) (England) Regulations 2012

The Broadland District Tree Preservation Order 2018 (No. 4)
Broadland District Council

To: Mr Michael Francis Trafford, The Wroxham Estate Office, Home Farm, Wroxham, Norfolk, NR12 8SY

THIS IS A FORMAL NOTICE to let you know that on 27th June 2018 the Council made the above tree preservation order.

A copy of the order is enclosed. In simple terms, it prohibits anyone from cutting down, topping or lopping any of the trees described in the First Schedule and shown on the map without the Council's consent.

Some explanatory guidance on tree preservation orders is given in the enclosed leaflet, *Protected Trees: A Guide to Tree Preservation Procedures*, produced by the Department of Transport, Local Government and the Regions.

The Council has made the order to safeguard the significant visual amenity and biodiversity value offered by the tree to the immediate area and the wider environment.

The Order took effect, on a provisional basis, on 27th June 2018. It will continue in force on this basis for a maximum of 6 months or until the order is confirmed by the Council, whichever first occurs.

The Council will consider whether the order should be confirmed, that is to say, whether it should take effect formally. Before this decision is made, the people affected by the order have a right to make objections or other representations (*including your support*) about any of the trees, groups of trees or woodlands covered by the order.

If you would like to make any objections or other comments, please make sure we receive them in writing by 27th July 2018. Your comments must comply with regulation 6 of the Town and Country Planning Act (Tree Preservation) (England) Regulations 2012, a copy of which is provided overleaf. Send your comments to Mr P Courtier (Head of Planning) at the address given below. All valid objections or representations are carefully considered before a decision on whether to confirm an order is made. Any comments you make will be available for public inspection. Therefore please be advised that any letter received could not be treated in confidence.

The Council will write to you again when that decision has been made. In the meantime, if you would like any further information or have any questions about this letter, please contact Alex Lowe at Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, NR7 0DU. Telephone (01603) 430560.

Dated this 27th day of June 2018.

Mr P Courtier
Head of Planning

**COPY OF REGULATION 6 OF THE TOWN AND COUNTRY PLANNING ACT
(Tree Preservation) (England) REGULATIONS 2012**

Objections and representations

6(1) Subject to paragraph (2), objections and representations –

- (a) shall be made in writing and –
 - (i) delivered to the authority not later than the date specified by them under regulation 3(2)(c); or
 - (ii) sent to the authority in a properly addressed and pre-paid letter posted at such time that, in the ordinary course of post, it would be delivered to them not later than that date;
- (b) shall specify the particular trees, groups of trees or woodlands (as the case may be) in respect of which the objections or representations are made; and
- (c) in the case of an objection, shall state the reasons for the objection.

6(2) The authority may treat as duly made objections and representations which do not comply with the requirements of paragraph (1) if, in the particular case, they are satisfied that compliance with those requirements could not reasonably have been expected

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990

TOWN AND COUNTRY PLANNING ACT (Tree Preservation) (England) Regulations 2012

The Broadland District Tree Preservation Order 2018 (No. 4)
Broadland District Council

To: Mrs K. Kavanagh-Reed, 16 Keys Drive, Wroxham, Norfolk, NR12 8SS

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IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990

TOWN AND COUNTRY PLANNING ACT (Tree Preservation) (England) Regulations 2012

The Broadland District Tree Preservation Order 2018 (No. 4)
Broadland District Council

To: Owner/Occupier, 18 Keys Drive, Wroxham, Norfolk, NR12 8SS

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Dated this 27th day of June 2018.

Mr P Courtier
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- (c) in the case of an objection, shall state the reasons for the objection.

6(2) The authority may treat as duly made objections and representations which do not comply with the requirements of paragraph (1) if, in the particular case, they are satisfied that compliance with those requirements could not reasonably have been expected

TOWN AND COUNTRY PLANNING (Tree Preservation) (England) REGULATIONS 2012

Town and Country Planning Act 1990 The Broadland District Council Tree Preservation Order 2018 (No.4)

The Broadland District Council, in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—

Citation

1. This Order may be cited as the Broadland District Tree Preservation Order 2018 (No.4)

Interpretation

2. (1) In this Order “the authority” means the Broadland District Council.
(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

Effect

3. (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.
(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall—

(a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or
(b) cause or permit the cutting down, topping, lopping, wilful damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter “C”, being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 27th day of June 2018.

The Common Seal of the Broadland District Council
was affixed to this Order in the presence of—



Head of Finance and
Revenue Services

SCHEDULE 1

SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

Reference on map	Description	Situation
T1	Oak	TG 30041 16879

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

Reference on map	Description	Situation
NONE	NONE	NONE

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

Reference on map	Description (including number of trees in group)	Situation
NONE	NONE	NONE

Woodlands
(within a continuous black line on the map)

Reference on map	Description	Situation
NONE	NONE	NONE

BROADLAND DISTRICT
Tree Preservation Order

2018 No. 4

Key

Individual Tree



T1 - Oak



Scale as shown



Thorpe Lodge, 1 Yarmouth Road

Thorpe St Andrew, Norwich, NR7 0DU.

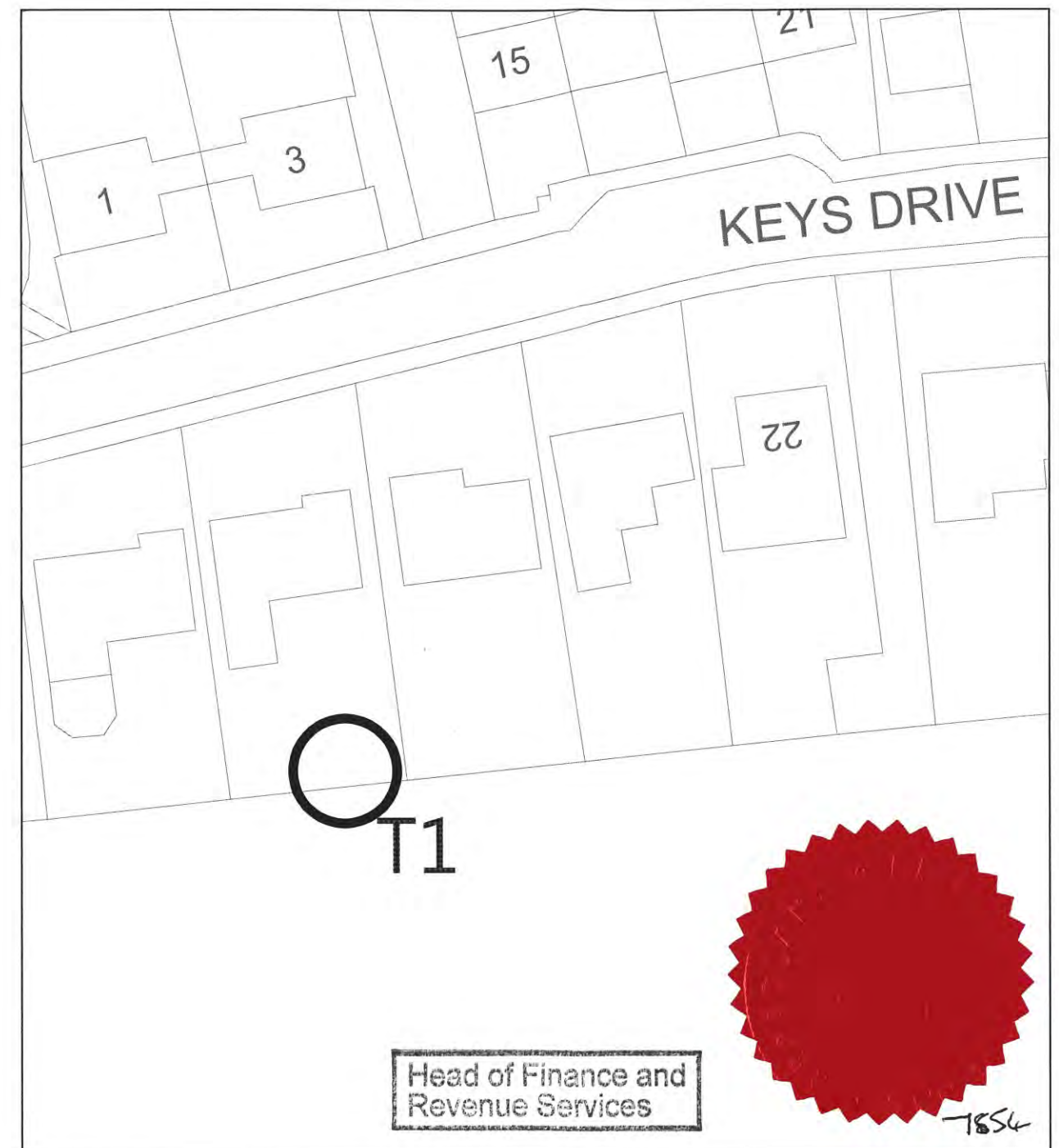
Tel (01603) 431133

E-mail conservation@broadland.gov.uk

**Tree Preservation
Order**

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No further copies may be made

Wroxham



Tree Preservation Order 2018 No. 4

16 Keys Drive, Wroxham, NR12 8SS

Scale 1:500



www.broadland.gov.uk

TOWN AND COUNTRY PLANNING (TREES) REGULATIONS 1999
As amended by the Town and Country Planning (Trees)(Amendment)(England)
Regulations 2008

Town and Country Planning Act 1990
The Broadland District Council Tree Preservation Order 2010 (No.73)
Trees on land at Keys Drive, Wroxham

The Broadland District Council, 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 Broadland District Tree Preservation Order 2010 (No.73)

Interpretation

2. In this Order “the authority” means the Broadland District Council 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 25 October 2010.

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 (1) of section 200 (tree preservation orders: Forestry Commissioners), 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—

Broadland District Council
Thorpe Lodge, 1 Yarmouth Road
Norwich, NR7 0DU

Switchboard tel: (01603) 431133



- (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;
- (aa) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable the implementation of an order made or confirmed under paragraph 8(1) or paragraph 15(1) of Schedule 1 to the Highways Act 1980 (procedures for making or confirming certain orders and schemes);
- (ab) the cutting down, topping, lopping or uprooting of a tree where that work is urgently necessary for national security purposes;
- (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 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 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 sewerage undertaker,
- the Civil Aviation Authority, a body acting on behalf of that authority or a person who holds a licence under Chapter I of Part I of the Transport Act 2000,
- a universal postal service provider in connection with the provision of a universal postal service.

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.

¹ Article 6 omitted by regulation 2(4)(a) of the Town and Country Planning (Trees) (Amendment) (England) Regulations 2008, Statutory Instrument 2008, No.2260

(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 application and the documents and particulars accompanying it, 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 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 25th day of October 2010

The Common Seal of the Broadland District Council
was hereunto affixed in the presence of -



HEAD OF CORPORATE SERVICES
& MONITORING OFFICER

6442

REVOCATION OF ORDER

This Order was revoked by the Broadland District Council on the _____ day of _____ under the reference number _____

CONFIRMATION OF ORDER

This order was confirmed by the Broadland District Council without modification on the 3rd day of February 2011

SCHEDULE 1

SPECIFICATION OF TREES

Trees specified individually (encircled in black on the map)

Reference on map	Description	Situation
T1	Oak	TG 30086 16884
T2	Oak	TG 30100 16885
T3	Oak	TG 30159 16889
T4	Beech	TG 30153 16896
T5	Beech	TG 30164 16918
T6	Oak	TG 30164 16940
T7	Lime	TG 30159 16962
T8	Oak	TG 30157 17015
T9	Beech	TG 30162 17022
T10	Oak	TG 30171 17040

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

Reference on map	Description	Situation
NONE	NONE	NONE

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

Reference on map	Description (including number of trees in group)	Situation
NONE	NONE	NONE

Woodlands (within a continuous black line on the map)

Reference on map	Description	Situation
NONE	NONE	NONE

BROADLAND DISTRICT
Tree Preservation Order

2010 No.73

Key

Individual Trees T1-T10



Scale as shown



Thorpe Lodge, 1 Yarmouth Road
Thorpe St Andrew, Norwich, NR7 0DU.
Tel (01603) 431133
E-mail conservation@broadland.gov.uk

**Tree Preservation
Order**

REVOCATION OF ORDER

This Order was revoked by the Broadland District
Council on the day of
under the reference number

CONFIRMATION OF ORDER

This order was confirmed by the Broadland District
Council without modification on the 3rd day of
February 2011

HEAD OF CORPORATE SERVICES
& MONITORING OFFICER



6442

HEAD OF CORPORATE SERVICES
& MONITORING OFFICER

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(100022319) (2010)

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Wroxham



Tree Preservation Order 2010 No. 73

Keys Drive, Wroxham

Scale 1:1250

SCHEDULE 2

PART I PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990 APPLIED WITH ADAPTATIONS OR MODIFICATIONS

Provision of the Town and Country Planning Act 1990	Adaptation or Modification
Section 69 (registers)	<p>(a) In subsection (1)—</p> <p style="padding-left: 40px;">(i) omit—</p> <p style="padding-left: 80px;">“, in such manner as may be prescribed by a development order,”,</p> <p style="padding-left: 80px;">“such” in the second place where it appears, and</p> <p style="padding-left: 80px;">“as may be so prescribed”; and</p> <p style="padding-left: 40px;">(ii) substitute “matters relevant to tree preservation orders made by the authority” for “applications for planning permission”.</p> <p>(b) In subsection (2)—</p> <p style="padding-left: 40px;">(i) after “contain” insert “, as regards each such order”; and</p> <p style="padding-left: 40px;">(ii) for paragraphs (a) and (b) substitute—</p> <p style="padding-left: 80px;">“(a) details of every application under the order and of the authority’s decision (if any) in relation to each such application, and</p> <p style="padding-left: 80px;">(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.”.</p> <p>(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)—</p> <p style="padding-left: 40px;">(i) substitute—</p> <p style="padding-left: 80px;">“Subject to subsections (1A) and (1B), where” for “Where”;</p>

	<p>“the authority” for “a local planning authority”;</p> <p>“consent under a tree preservation order” for “planning permission” where those words first appear; and</p> <p>“consent under the order” for “planning permission” in both of the other places where those words appear;</p> <p>(ii) after “think fit”, insert—</p> <p>“(including conditions limiting the duration of the consent or requiring the replacement of trees)”; and</p> <p>(iii) omit “subject to sections 91 and 92,”.</p> <p>(b) After subsection (1) insert—</p> <p>“(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.</p> <p>(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).”.</p> <p>(c) Omit subsections (2) and (3).</p>
Section 75 (effect of planning permission)	<p>(a) In subsection (1) substitute—</p> <p>(i) “Any” for the words from “Without” to “any”;</p> <p>(ii) “consent under a tree preservation order” for “planning permission to develop land”;</p> <p>(iii) “the consent” for “the permission”; and</p> <p>(iv) “the land to which the order relates” for “the land”.</p> <p>(b) Omit subsections (2) and (3).</p>
Section 78 (right to appeal against planning decisions)	<p>(a) In subsection (1) substitute—</p>

<p>and failure to take such decisions)</p>	<ul style="list-style-type: none"> (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— <ul style="list-style-type: none"> "(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,". <p>(b) Omit subsection (2).</p> <p>(c) In subsection (3) for "served within such time and in such manner as may be prescribed by a development order." substitute—</p> <p>"in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served—</p> <ul style="list-style-type: none"> (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." <p>(d) For subsection (4), substitute—</p> <p>"(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3)."</p>
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	<p>(e) For subsection (5), substitute—</p> <p>“(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>
Section 79 (determination of appeals)	<p>(a) In subsections (1) and (2), substitute “the authority” for “the local planning authority”.</p> <p>(b) Omit subsection (3).</p> <p>(c) In subsection (4), substitute—</p> <ul style="list-style-type: none"> (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 sections 65 or 71.”. <p>(d) Omit subsections (6) and (6A).</p> <p>(e) In subsection (7), omit the words after “section 78”.</p>

PART II
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.

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 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.

.....

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

Mr P Courtier
Head of Planning
Broadland District Council
Thorpe Lodge
1 Yarmouth Road
Norwich
NR7 0DU

SUBMITTED BY EMAIL – conservation@broadland.gov.uk

3rd July 2018

Ref: TPO 2018 No . 4 (1287)

Dear Mr Courtier

OBJECTION TO PROPOSED TREE PRESERVATION ORDER 16 KEYS DRIVE, WROXHAM, NR12 8SS

We are writing to formally object to proposed Tree Preservation Order TPO 2018 No . 4 (1287). This proposed Order relates to the Oak tree in the back garden of our property at 16 Keys Drive, Wroxham, NR12 8SS.

The grounds for the Order have been made for the below reasons:

- Safeguard the significant visual amenity
- Biodiversity Value offered by the tree to the immediate area and wider environment

Our reasons for objection to the above points are as follows:

- Safeguard the significant visual amenity

As you will note from the plans the council have provided, the tree in question is within our back garden of 16 Keys Drive, Wroxham, NR12 8SS. I have inserted pictures below of the trees position from the roadside at the front of our property. You will note that both our property and the surrounding properties restrict the view of the tree and only the top of the tree can be seen by the public from the roadside outside our house.



Aviva: Public

Many of the below pictures indicate the position and state of the tree. You will see the stem angle of the tree is completely off centre, the crown is sparse and the tree has a heavy lean towards the field. We have been trying to be safe and cover 'our' duty of care under the occupier's liability act by removing the tree. Should our appeal for the Tree Protection Order be rejected we will not be financially responsible and Broadland District Council will accept the conditions to pay any costs in full should this tree fall or if any remedial work must take place due to our financial situation and having our first baby.





The Tree is not the greatest of specimens and we have inserted pictures below to indicate this. You will see that the tree has areas where it is showing little life, it has already been heavily pruned by the previous owners who had ongoing concerns of the safety of the tree and therefore giving the tree a shorter lifespan.







We have inserted a picture from our garden view and a zoomed in picture from Salhouse Road. You will note our neighbours tree (no 14's) and see the difference in the canopy's is remarkable and how sparse our tree is.



You will see from the below picture the field behind the tree is a farmer's field used for crops. There is no public access to this field, and the roads surrounding the field are covered by hedges which are higher than head height for an average adult with no public footpaths allowing the public to see the tree. Therefore, the tree could only be seen by high vehicles driving past.



The Tree Protection Order ensures we provide root protection to the tree. This would be around 12-15-meter radius. Our garden is 14.6 meters by 12.8 meters. This means we will need to consider the roots to the tree if we want to look to do anything within our garden. This will include safeguarding these when we look to build our proposed extension.

Overall, we believe that there is limited or no visibility from a public point of view for the tree. The tree can not be seen with ease from public or private locations. The tree is not in great condition with a sparse canopy and therefore does not warrant Tree Protection Order.

- Biodiversity Value offered by the tree to the immediate area and wider environment

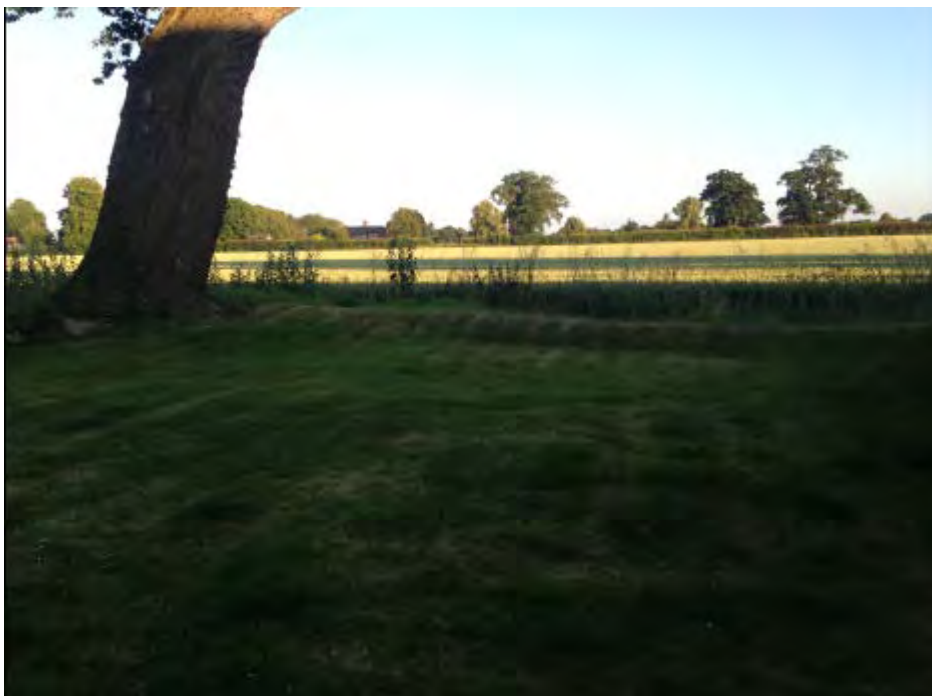
Although we appreciate the tree can provide biodiversity value, as the tree is on our private residential property, the making or confirmation of a Tree Preservation Order has interfered with the rights we have as UK citizens (under Article 8 of the European Convention on Human Rights) to respect our private life, family life and our home.

As you will see from the picture inserted above and pictures inserted below the safety of our child, future children and children who regularly visit our property is at risk. The field is a working field therefore has heavy machinery operated in it throughout the year to harvest the crops. The tree and its imposing roots are currently preventing us from putting up a fence to safeguard the children by entering the field. If the appeal is rejected and if anything was to happen we will hold the council liable due to their acknowledgment of putting a Tree Protection Order in place over the priority of human safety and will pursue legal action against them for failure to allow us to provide a safe environment to our home.

The only way a fence can be put up within our garden is if we put this in front of the tree. This will force us to lose approx. 50 square meters of our garden due to it being illegal to wilfully damage or cut roots of a tree with a Tree Protection Order on it, as well as being able to easily erect a fence

with the tree in its current position. If the appeal to the Tree Protection Order is rejected we do not believe we should be forced to lose approx. 50 square meters of our garden and the value of this from our property therefore the council should accept to compensate us for this loss of land.

We have taken the value of our home and land (paid for in March 2018) and worked out the cost per square meter therefore we would expect no less then £42,800 and any further costs that may devalue the property from the council for our loss of land.



The other concerns we have due to the tree preventing us making our home and garden safe are:

- ❖ The field does not allow public access however we have concerns that people can easily gain access through the hedges to the field and therefore have easy access to our garden. This causes us stress and worry for the safety of our home creating a security risk where criminal activity could take place.
- ❖ The tree will regular have fallen twigs, sticks and branches both large and small fall. The tree covers most of our garden and as you can see from the below picture we will find these can be sharp. Not only the sharp objects being on the ground for children to pick up, these will also fall at anytime. This worries us and impedes on safeguarding the children and makes us question if we feel comfortable allowing our children to play in the garden without the need for a consistent watchful eye.



We are expecting our first baby within the next few days (40 weeks pregnant on 5th July) and since receiving the Tree Protection Order our mental wellbeing has suffered as a result. We have had high levels of stress and anxiety with sleepless nights and the Order causing us to not be able to look into our garden and at the tree without an enormous amount of panic and emotion (inc tears) with feeling trapped in our home that we can not make safe. As new parents we want to ensure our home is safe and the tree is a constant reminder that we are unable to do this.

The surrounding field has other trees of similar size, not to mention the Keys Drive Woodlands area which is a 3-5 minute walk down the road to our property which provides further biodiversity for the immediate area and wider environment without detriment to the safety of someone's home (mainly ours) therefore the Tree Protection Order places undue hurdles in our way and mental health concerns in ensuring our home become a safe place to live.

We feel we have other reasons to object against the order which we have details below:

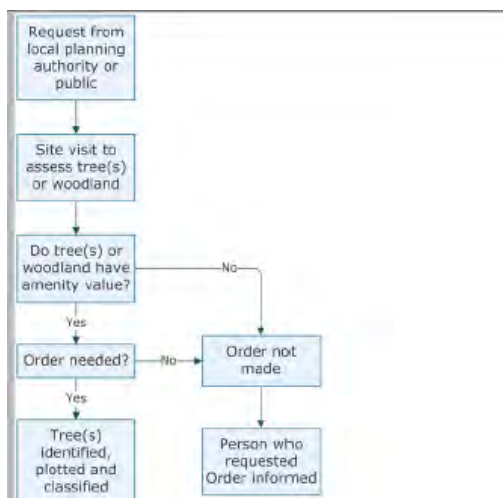
- We called the council prior to buying the property (week commencing 8th January) to establish if there was a Tree Preservation Order on the tree due to our concern for buying the property with the tree in place. We informed the council of our intentions to erect an extension and our concerns for the safety of the property and the financial implications if we couldn't remove it with the up keep needed to which we were informed the property was not in a conservation area and no preservation order was on the tree. Once we brought the property and moved in we called the council again (week commencing 26th March) to check again the tree didn't have a preservation order on it and were informed it still did not. The council did not act at either of these points to proceed with a Tree Protection Order or inform us that this could be a possibility. We feel that we have been mislead and tricked into buying the property.
- We are concerned that by imposing a Tree Protection Order we will be unable to remove the tree and therefore a) preventing us from proceeding with our planned extension. This is not due to the council rejecting the planning permission (our planning officer has confirmed this is ok) but due to our concern of the tree and its roots being too close and overbearing to the future property once the extension is erected and b) the future of the damage and ongoing maintenance to property including gutters, drainage system etc
- Under the anti social behaviour act we are allowed the right to light. The garden area is 14.6 meters by 12.8 meters. The tree already limits the natural light we have and with the extension this will limit the natural light within the extension once erected and the external area further. This provides further concerns for our mental wellbeing (on top of the security concerns we have) and the ability to enjoy the comfort of our home and garden.
- Neighbours Comments: I have spoken to my neighbours who are shocked that a Tree Protection Order has now been placed on our tree. We spoke to both neighbours as soon as we were in the property (week commencing 26th March) prior to contacting the tree surgeons to ensure they were comfortable with the removal of the tree and both were delighted. Our neighbours have similar concerns to ours with our tree. The tree is in close proximity of their gardens and they have had on-going concern with the tree falling down and causing destruction in their properties.
- The oak tree is the most common tree species in the UK therefore we are not proposing to remove a tree species that is at risk. It is our intention once the tree was removed, fence

erected and the extension was completed the garden would be tidied up and we would replant a tree.

On a final note but something we believe should be taken very seriously, since being in the property our concerns have become a reality. The tree was due to be removed the beginning of July (Monday 2nd July). When the planning officer informed us of her views that the tree needs a Tree Protection Order on 25th June (6 months since our first contact with the council about the tree and around 2 months since submitting the planning permission), we advised her of our plans to remove the tree at the beginning of July and laid out our reasons for the removal through our architect (David Williams) via email on 26th June. The planning officer informed him that we would have a visit from a tree officer who would assess the situation further as her field of expertise is not preservation orders.

To our knowledge no site visit by the council's tree officer had taken place before they submitted the order. Our views when we received the order was that if a visit did take place then this would have been a very quick turn around (2 days) and the access to review the tree would have been without our consent or would have taken place on Salhouse Road which could not possible provide enough information needed to conclude that a protection order is required. Our architect spoke to Alex Lowe who undertook the assessment on 2nd July who confirmed his assessment took place from Salhouse Road. Our architect raised our dissatisfaction of the assessment and the way the council has approached putting the Tree Protection Order in place and have not followed the appropriate steps required. The Governments website provides a step by step flow chart of what SHOULD have happened (inserted website and picture below):

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/578695/tpo1.pdf



We do not agree that the preservation order has been submitted with good knowledge of the area, property and the tree. The council have acted irrationally due to the timeframes of us removing the tree (which was scheduled prior to our knowledge of the council's intentions). The council had plenty of other opportunities over the last 6 months to act and there was no consideration for the points laid out in David Williams email to the planning officer nor did the council follow the appropriate steps set out by the Government and undertake a site visit. The final picture is from Salhouse Road. You will see that there is no way a tree can be fully assessed and all the points above be realised from an assessment taken place from so far away.



We are hopeful that the council will review our appeal and clearly see that the Tree Protection Order has been wrongly put on the tree.

If the appeal is rejected then we will take this as confirmation that the council are accepting to be financially liable for the tree, provide compensation for the loss of land and accept the risk that legal action will be pursued if anything was to happen as we are unable to safeguard our home.

All our plans to make our home safe with a fence and erect an extension are now on hold. As the council can move quickly with the turn around of the Tree Protection Order we should not have to wait 6 months for confirmation of the outcome of this appeal and will be looking to the council to put things right in a quicker time frame so we can put this behind us and move forward. We look forward to acknowledgement of the above and receiving details of the Council's determination upon this matter in due course.

Yours sincerely

Mr & Mrs R Kavanagh-Read

APPEALS PANEL

Wednesday 19 September 2018

Final Papers

Item	Details	Page No
4	<u>The Broadland District Tree Preservation Order 2018 (No 4) 16 Keys Drive, Wroxham, Norwich, NR12 8SS</u>	66 – 85

Tree condition survey commissioned by Mrs Kavanagh-Read.

DEMOCRATIC SERVICES

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TREE CONDITION REPORT

•79 Stalham road, Hoveton, Norfolk, NR12 8EF •
•Telephone 01603 916154 •

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1. INTRODUCTION

1.1 Scope

I have been instructed by Mrs K Kavanagh-Reed to carry out a tree investigation report for an appeal of the TPO 2018 No4 (1287) which was served on their property. This report is to assess the trees structure as well as stated reasons for serving the TPO – Significant visual amenity and biodiversity. This report will reference conversations and documentation in regards to this appeal and conversations regarding this tree during the dispute period only.

1.2 Tree condition and woodland survey outline

There are four compelling reasons to have a structured program for tree inspections.

- a) Provide documented evidence that a property owner/occupier is compliant with their legal obligations to provide an adequate 'duty of care' for visitors and users of the property.
- b) Reduce the risk of harm to people or property to as low as reasonably possible by managing the trees effectively. This involves identifying potential hazards, ranking them according to their severity and prioritising action to achieve an acceptable level of risk.
- c) Identify tree defects and ameliorate them by prescribing remedial maintenance. This will extend the safe useful life expectancy of the trees and preserve the important natural amenity and wildlife habitats provided by them.
- d) Provide a pro-active and effective management plan to aid budgeting and allocation of resources.

1.3 Documents and Information provided

For the purpose of compiling a through investigation into the serving of the Tree Preservation Order 2018 No.4 1287 at 16 Keys Drive, Wroxham NR12 8SS, I have been provided with correspondences between Mrs K Kavanagh-Reed and Mr A Lowe. Of this correspondence I have been supplied with the an email exchange on 13/08/2018 11:38 from Mr A Lowe and the reply at 21:02 from Mrs K Kavanagh-Reed over her questions about the serving of the Tree Preservation Order.

I have been provided with Mrs K Kavanagh-Reeds' objection letter dated 03/07/2018 to assist with my understanding of the correspondence from 13/08/2018

I have also been supplied with the Tree Preservation Order document to accompany this investigation. This is also attached to the report.

1.4 Limitations and use of copyright

All right in this report are reserved. No part of it may be reproduced or transmitted, in any form or by any means without our written permission. Its contents and format are for the exclusive use of Mrs K Kavanagh-Reed

It may not be sold, copied, forwarded, lent out or divulged to any third party not directly involved in this situation without written consent of Target Trees.

Trees are living organisms whose health and condition can change rapidly. The conclusions and recommendations in the Report are only valid for one year and five years in the Woodland Survey. Any changes to the site as it stands at present, e.g. building of extensions, excavation works, importing of soils, extreme weather events (including strong winds) etc will invalidate this report.

Visual tree assessment has been undertaken from ground level utilising aids such as sounding hammer and probes where necessary. If a more detailed investigation was carried out or required in the future this will be highlighted in the text. A more detailed inspection may take the form of a climbing inspection, decay assessment or root collar investigation.

1.5 Disclaimer

I have no connection with Mrs K Kavanagh-Reed and have only been instructed to carry out this investigation and produce a report on this Tree Preservation Order.

Target Trees has and does carry out works for Broadland District Council although I have spoken to Mr A Lowe and dealt in e-mail correspondence over works applications I have never met Mr A Lowe in person. This will not influence my findings within this report and all documented information will be fair and non-biased, based on my findings.

2 THE SITE

2.1 Site visit

I carried out an assessment of the tree on Thursday 6th September 2018. My findings are recorded and accurately measured. The weather was cloudy with a slight breeze allowing very good conditions to assess and view the inner crown due to the lack of direct sunlight.

2.2 Site description

The area where the tree is located is situated at the rear of the property (South). The area is flat until it meets the tree, where the rooting area has raised the ground slightly.

2.3 Identification and location of highlighted trees

The tree TPO 2018 No4 (1287) is clearly marked within this document.

3. **EXPLANATION OF ASSESSMENT**

3.1 Legal framework

There is an obligation of reasonable safety owed by site owners to both visitors and to those adjacent to the site under the Occupiers Liability Act 1984. The owner of the land may be held liable for any physical harm to person or property arising from an accident that was both reasonably foreseeable and reasonably preventable in that situation.

In order for an owner to foresee and prevent harm arising from tree failure, it is necessary to subject the trees to 'regular inspection' by someone competent to identify defects and interpret the significance to public safety. This should take the form of a 'Tree Condition Survey'.

3.2 Duty of care

- The law assumes that the owner of a tree is the owner of the land surrounding the base of its trunk.
- The person responsible for any tree has a duty, known in the law as the **duty of care**, to take reasonable care to avoid acts or omissions, which they could foresee would be likely to cause harm.
- In practice it is never possible to completely eliminate all danger. The law therefore simply requires that the owner takes reasonable care to identify possible sources of foreseeable danger and when hazards have been identified they should remove them as far as possible.
- **Negligence** is a breach of legal duty resulting in damage. For example, when a tree owner fails to take necessary action, resulting in harm to people, animals or property.
- The law does not require or expect the impossible. The duty on owners is not to take every possible step to achieve perfect safety, as this would mean almost every tree being felled. The duty of the owner is rather to take all reasonable care to ensure that people are safe. What is "reasonable" must ultimately be a matter of judgement for the tree owners and their professional advisers.

- In order to provide an adequate duty of care, a tree condition survey is necessary, in which two separate factors of **Hazard** and **Risk** are addressed.

3.3 Hazard and Risk

- **Hazard** is the potential for a tree to mechanically fail or impact on something and cause physical harm.
- **Risk** is the probability or likelihood that harm will occur during a stated period of time and the consequences of the impact.

3.4 Tree risk

Is comprised of three separate factors, which are considered separately. These factors then lead to the decision for the recommendations and work priority.

- a) **Risk**, which is the estimated chance of likelihood of a previously identified tree hazard falling in the next coming year. For example a large seasoned piece of deadwood in a tree is less likely to fail than a split and hanging branch, which is moving in the wind.
- b) **The size of the identified hazard part** of the tree is also very relevant. A small piece of deadwood may have the same risk of falling as a whole tree but the consequences of that failure are very different; ranging from slight injury or damage to possible fatalities or major structural damage.
- c) **Target** rating relates to the location of the tree and the occupancy and intensity of use of the land surrounding it. Any person, animal or property that is in range of a potential tree hazard is known as a target. For example, a mature tree with a large split limb in remote woodland would be considered a high risk but a low hazard. The same tree located on a busy street in a city would be high hazard and a high risk. Targets range from low, medium to high

3.5 Tree hazards

A trees shape and form is governed by the laws of mechanics, the same as any structure, but trees are also dynamic and lay down tension and compression wood to compensate for weight and wind loading and produce reaction wood in response to decay or structural weakness. In fact, trees have evolved to have excessive mechanical safety factors in order to cope with extreme weather conditions.

The signs of possible structural weakness are usually evident from external inspection by a trained and experienced person who can evaluate the potential hazard risk and prescribe remedial action.

Trees are also naturally shedding organisms and regularly drop twigs, branches and occasionally limbs as part of the natural growing process. A trees structural integrity can also be compromised by natural faults and biological factors such as fungi, bacteria and viruses, which influence wood strength at a cellular level. They can also be impacted by environmental influences such as wind, flooding, pollution, compaction, physical impacts etc.

4.0 Recorded information and assessment of the tree.

Under Regulation 3 of the regulations the only reasons submitted by Mr A Lowe of Broadland District Council and Signed by Mr P Courtier 27/06/2018 states the reason for serving the TPO “The Council has made the order to safeguard the significant visual amenity and biodiversity value offered by the to the immediate and wider environment”.

As per the issued document there has been no information provided by Broadland District Council within this about or regarding an assessment of the trees structure. The structure is noted within the objection letter by Mrs K Kavanagh-Reed “ The tree is not in great condition with a sparse canopy”. This was not fully addressed within the e-mail on 13/08/18 from Mr A Lowe which only directs the client towards evidence form a professional arborist (written or oral), this is clearly shown in picture 10 of their report showing an area of dysfunction within the right hand limb.

Assessment of ‘Amenity’ – Although the Town & Country Planning Act Part 8, Chapter 1 does not define ‘amenity’, although in the Secretary of States view, Tree Preservation Orders (TPO) should be used to protect selected trees if their removal would have significant impact on the local environment and its enjoyment by the public. The Local Planning Authority (LPA) should be able to show that a reasonable degree of public benefit would accrue before TPO’s are made or confirmed. The tree, or at least part of them should therefore normally be visible from a public place, such as roads or footpaths.

Findings of ‘Amenity’ – This tree is visible from the junction of The Avenues and the B1140 although drivers focus will be on the change in speed limit and the tree is a significant distance from the road, blocked by a hedgerow along The Avenues and a bus shelter along the B1140. The B1140 also has 2 mature trees and a section of hedge opposite Wherry Gardens Junction

located towards the junction of Keys Drive and approximately 320ft from the junction with The Avenues.

From the Junction of Wherry Gardens the tree is approximately 40% visible and is obscured by the denser oak tree located in No14's rear garden (Keys Drive).

Visibility from Keys Drive itself has significantly limited value due the tree being obscured by the denser oak tree at No 14 Keys Drive. Approximately 7% of the tree is visible from the main road towards the junction with the B1140, which is not increased from a view point on the open space slightly further down the road. The maximum area of view is located opposite No16 and No 18 Keys drive which shows approximately 35% of the entire tree at the footpath on the same side as the property.

Conclusion of 'Amenity' – The tree is limited in its visual presence from keys drive and Wherry gardens although it is significantly more visible form the junction of The Avenue and B1140 for approximately 320ft drivers will be reducing speed on the approach and should have their attention on the junction of The Avenue and Wherry Gardens. After this point a hedge and 2 mature trees on the B1140 will obscure the view. The Avenues view is screened by s significant hedgerow along the field. The visual amenity and viability of this tree could be significantly compromised under the Greater Norwich Local Plan Regulation 18 GnLP0504

http://www.gnlp.org.uk/assets/parishes/Wroxham%20CP_mapBook.pdf

Biodiversity Assessment – The tree is a mature specimen which will due to its age have a larger level of biodiversity than a smaller specimen. The trees biodiversity is limited in comparison to the Oak tree in No14 Keys drive as its crown is sparser and the tree has 2 significant point where a significant risk of failure could occur within the future. The tree appears to have no potential or active bat roosts from my inspection I did not see signs of bat presence either historically or current activity (Flux from faeces or scratch marks from bats entering/exiting the roost). My assessment also did not record any wildlife active within any decay pocket or hollowed area.

Visual Assessment of the Tree – I have carried out a visual inspection of the tree using measuring tapes, binoculars, electronic clinometer and a diameter tape. My assessment is recorded from the upper crown and finishes at the base and rooting area.

The crown is considerably sparser than the other Oak tree within No14 Keys Drive, located at approximately 12m above ground level signs of historic topping which, has resulted in the formation of multiple leaders to replace the loss of these. Throughout the crown there are a number of declining smaller branches although some areas have varying levels of new extension growth and foliage coverage. The foliage appears to be healthy although sparse in areas in comparison to the oak in No14 Keys Drive.

The main structural limbs and the crown have transferred the main load of the trees centre of balance 6.2m south of the main stem at ground level. This could result in major tree failure due to lever arm effect if left unmanaged in the future.

A large decay pocket noted at 6.5m above ground level on the western limb, located above an old pruning wound which is approximately 10 inches at the widest point (old pruning wound) and has approximate dimensions of 14 inches which reduces down to 7 inches wound which extends upwards and around this pruning wound. Due to its location this area of damage could cause a significant and catastrophic failure of approximately 45% of the tree.

The southern limb has clear signs of dysfunction and decline, this may have been caused from the historic damage to the cambium noted along this entire section of the stem over the arable field. The second stem closer towards the property has signs of decay and reactive growth from historic topping and some declining branches as a result. An open decay cavity formed within a section of a partially compartmentalised wound is located on the south eastern side of this stem and is approximately 3 inches by 5 inches which is clearly a significant area of decay and may require further inspection to fully identify the risk of failure this area poses to the southern stem. It has possibly signs of an inactive bees nest although I could not be 100% sure due to the limited angle of view from ground level.

The Eastern stem which overhangs No18 Keys drive is attached in the vicinity of the main union of the 2 main stems.

The main stem clearly has areas of dysfunction within the cambium, which rotates from north towards the house and the main stem unions, finishing up south east at the basal areas where a section of stem damage and dead cambium is located. Some sections have signs of full and partial compartmentalisation of these wounds.

The rooting area has signs of historic rooting damage in the northern area where the north eastern root has clear signs of significant damage and partial severing of this main anchoring root which is located on the opposite side of the tree to its significant lean.

Tree dimensions –

The tree is 12.92m away from the kitchen door of the house.

Northern crown spread – 3.05m

Southern crown spread – 13.49m

Eastern crown spread – 7.03m

Western crown spread – 5.49m

Crown height – 13.06m above ground level

Age – Mature

Stem diameter – 1243mm

Conclusion – Although this tree is a mature specimen it has an increased potential of significant crown failure or crown decline (dependant on weather trends). The trees amenity value of visibility is visible although heavily reduced due to hedges; other mature trees, significant road junctions and speed reductions from the national speed limit to 30mph area that would remove the publics direct view of the tree although it would be in their peripheral view for a small period of time.

The tree has signs of structural defects on the main stems and historic damage to the main stem, base and northern surface root. Rooting area will be limited from entering the available field space due to current farming techniques and regular usage of this field.

5.0 SIGNATURE

This report is for the sole use of Mrs K Kavanagh-Reed and their clients and refers to only those tree identified within this report; use by any other person(s) in attempting to apply its contents for any other purpose renders the report invalid for that purpose.

- This Report is valid until **10/09/2019**.

Signature: I.R.Flatters.

Print name: Ian Flatters

Date: 10/09/2018

Appendix 1: Qualifications of Ian Flatters

Date	Company	Qualifications
Mar-16	Lantra	Loler Inspector Qualification
Sep-07	AA	ABC Level 3 Technicians Certificate in Arboriculture – Credit
Apr-07	NTA	First Aid
Feb-07	City and Guilds	Hiab Crane Operations
Dec-05	IPAF	Mobile Elevated Work Platforms VMP26
Sep-05	NPTC	Stump Grinder level 2 Units 1/2/3
Apr-05	City and Guilds	Street works Monitoring Signing, Lighting and Guarding
Sep-04	NPTC	CS40 - Carry out Pruning Operations
Sep-04	NPTC	CS41 – Dismantling Operations
Jun-04	NPTC	PA1 – Foundation Module in Pesticides
Jun-04	NPTC	PA6A – Hand Held Applicators in Pesticides
Dec-03	City and Guilds	Street works Signing, Lighting and Guarding
Jun-03	NPTC	Brushwood Chippers Level 2 1/2/3
Dec-02	NPTC	CS30 – Maintain the Chainsaw
Dec-02	NPTC	CS31 – Fell Small Trees
Dec-02	NPTC	CS36 – Crosscut and Stack Produce
Dec-02	NPTC	CS38 – Climb a Tree and Conduct Aerial Rescue
Dec-02	NPTC	CS39 – Operate a Chainsaw from Rope and Harness
Jul-02	Edexcel	Certificate in Arboriculture Tree Climbing and Chainsaw Use – Distinction Tree Felling and Dismantling – Merit Tree Surveys and Reports – Pass Arboriculture 2 - Merit
Date	Company	Short Courses
Jun-18	Lantra	Loler inspectors refresher
Jun-18	Fire Service	Fire extinguishers at work
Mar-18	QA	Emergency First Aid at Work
Mar-18	QA	Forestry First Aid + F
Aug-15	ArbAid	Trauma Training – Advanced First Aid
Jun-09	AA	Arb Consultancy Writing Professional Reports - Jeremy Barrell at Meriden, West Yorkshire
Nov-07	Lantra	Arboriculture and Bats – a Guide for Practitioners – Patty Briggs in Essex
Jul-07	PTC	CS30 – Maintain the Chainsaw (Refresher Course) – Trevor Reynolds at Easton College, Norfolk
Jul-07	PTC	CS31 – Fell Small Trees (Refresher Course) – Trevor Reynolds at Easton College, Norfolk
Apr-06	CityCare	Manual Handling – Paul Jowsey at CityCare, Norwich
Date	Company	Seminars
Apr-09	AA/ArborEcology	Arboriculture and Ecology management - Andrew Cowan at Barcham Trees, Cambridgeshire
Dec-08	AA	Why do trees snap – Andy Tipping, Jim Smith at Barcham Trees, Cambridgeshire
Jul-07	AA	Chlorophyll Florescence – Glynn Percival at Barcham Trees, Cambridgeshire

Appendix 2: Photographs



Image 1 – Comparison of the tree in No14 (left) and No16 (right)



Image 2 – Showing signs of dysfunction in southern stems.



Image 3 – Decay cavities present on southern stems. Larger decay cavity partially obscured by foliage (left stem in image).



Image 4 – Closer imagery of decay wound.



Image 5 – Photograph of stem lean from the arable field.



Image 6 – Signs of historic cambium damage that has partial compartmentalisation.



Image 7 – Areas of dysfunction and cambium damage to the main stem.



Image 8 – Basal damage with dead cambium and areas of dying cambium.



Image 9 – Left – Historic rooting damage to northern side of the tree clearly showing significant damage.