

Delegated Report

Planning Reference 26/00460/TPO
Applicant Mr Roger Laine
Ward Twycross, Sheepy & Witherley



Hinckley & Bosworth
Borough Council

Application Site Witherley Memorial Playing Field, Church Road, Witherley

Proposal Silver Birch (T5, T6 and T7) infected with bacterial wetwood. Remove all three trees in order to slow the spread of infection and replace with two Green Beech Trees (*Fagus sylvatica*)

Case Officer Rudi Simpson (Technical Planning Assistant)

1. Recommendations

1.1. **Grant consent** subject to conditions at the end of this Report

2. Planning Application Description

2.1. This application seeks consent to remove protected Silver Birch trees T5, T6 and T7 at Witherley Memorial Playing Field, Church Road, Witherley and replace them with two Green Beech Trees (*Fagus sylvatica*). The Applicant has stated that the existing Silver Birch trees need to be removed because they are infected with bacterial wetwood and the removal of these trees would slow the spread of infection.

3. Description of the Site and the Surrounding Area

3.1. The three protected Silver Birch Trees within this application are located within the grounds of Witherley Memorial Playing Field in the settlement boundary and conservation area of Witherley. The trees are protected by the Borough Council of Hinckley and Bosworth (Witherley Memorial Playing Field, Church Road, Witherley) (No.3) Tree Preservation Order 2022 (22/00004/TPORD).

4. Relevant Planning History

4.1 **23/00198/TPO** Permitted (determined: 26.04.2023)

G1 (Labelled D-L) - Crown lift on the houses side by removal of smaller low branches to ¼ tree height. Higher branches on the houses side to be shortened by up to 50%. Tree height and branches on the playing field side to be untouched

4.2 **22/00519/TCA** Refused (determined: 10.10.2022)

Lop the crowns of the Silver Birch trees back to where they have been topped-off previously, reducing the height of each tree by approximately 1/3

5. Publicity

5.1 The application has been publicised by sending out letters to local residents. No responses have been received.

6. Consultation

6.1 The Council's Arboricultural Officer raised no objections to the proposed works and supported the provision of a replacement planting. The Arboricultural Officer stated that the replacement Common Beech (*Fagus sylvatica*) tree planting should be supplied as container-grown Extra Heavy Standard with a girth specification of 14cm to 16cm. No further responses have been received.

7. Policy

7.1 Core Strategy (2009):

- No relevant policies.

7.2 Site Allocations and Development Management Policies Development Plan Document (SADMP) (2016):

- Policy DM1: Presumption in Favour of Sustainable Development
- Policy DM10: Development and Design
- Policy DM11: Protecting and Enhancing the Historic Environment
- Policy DM12: Heritage Assets

7.3 National Planning Policies and Guidance:

- National Planning Policy Framework (NPPF) (2024)
- National Design Guide (2019)
- Planning Practice Guidance (PPG)

8. Appraisal

8.1. The key issues in respect of this application are the impact of the proposal upon the amenity of the area, and whether the proposed works are justified

8.2 Paragraph 136 of the NPPF highlights that trees make an important contribution to the character and quality of urban environments and can also help mitigate and adapt to climate change.

- 8.2 Policy DM10(c) of the SADMP states that developments will be permitted where they complement or enhance the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features. Policies DM11 and DM12 of the SADMP seek to protect and enhance the historic environment and heritage assets. Development proposals should ensure the significance of a conservation area is preserved and enhanced.
- 8.3 The affected trees are subject to a Tree Preservation Order and are therefore considered to have a high level of amenity value. The protected Silver Birch Trees (T5, T6 & T7) form part of a group of 11 protected Silver Birch trees situated along the Northern boundary of the playing fields. The tree group holds a prominent position and is visible from multiple vantage points, including Hall Lane, Church Lane, Home Farm Close and Post Office Lane. Due to their size and position, the trees are considered to contribute positively to the character and the appearance of the local area.
- 8.4 The Council's Arboricultural Officer has assessed the application and supports the proposal to remove the trees due to their poor condition. Given the valuable contribution the trees make to the surrounding area, a replanting condition would be considered to be expedient to mitigate any long-term adverse impact upon the overall amenity of the site. It is therefore considered that the proposed works would be suitable as long as they are carried out in accordance with BS 3998:2010. By virtue of the above it is considered that the work would not have a significant impact upon public amenity and is therefore acceptable in accordance with Policies DM10, DM11, and DM12 of the SADMP.

9. Equality Implications

- 9.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states: -
- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 9.2 Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.
- 9.3 There are no known equality implications arising directly from this development.

- 9.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Conclusion

- 10.1 In conclusion, the proposed works are considered to be acceptable and therefore in accordance with Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and Paragraph 136 of the National Planning Policy Framework (2024), subject to the imposition of appropriate conditions.

11. Recommendation

- 11.1 **Grant consent** subject to conditions at the end of this report:

11.2 Conditions and Reasons

1. The works to which this consent relates shall be completed within two years from the date of this consent.

Reason: To ensure that works are appropriate to the condition of the tree(s) at the time they are undertaken in accordance with the provision of the Town and Country Planning (Tree Preservation) Regulations 2012.

2. The approved works shall only be carried out in accordance with British Standards Recommendations for Tree work - BS 3998:2010.

Reason: To ensure that the works are carried out in a way that safeguards the health and amenity of the tree in accordance with Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and Paragraph 136 of the National Planning Policy Framework (2024).

3. The proposed works shall be restricted to the removal of the three Silver Birch Trees (T5, T6 & T7) only.

Reason: To ensure that the works are carried out in a way that safeguards the health and amenity of the trees in accordance with Policy DM10 of the Site Allocations and Development Management Policies Development Plan Document (2016) and Paragraph 136 of the National Planning Policy Framework (2024).

4. Within one month of the removal of the Silver Birch Trees (T5, T6 & T7) full details of the replacement Common Beech (*Fagus sylvatica*), including its size, location and maintenance requirements shall be submitted to, and approved in writing by, the Local Planning Authority. The replacement trees shall be of container-grown Extra Heavy Standards with a girth specification of 14–16 cm. The replacement tree shall be planted in accordance with the approved details during the next available planting season (October to March).

Reason: To ensure that a replacement tree is planted on site in the interests of protecting the amenity of the area in accordance with Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and Paragraph 136 of the National Planning Policy Framework (2024).

a. Notes to Applicant(s)

1. The Applicant is advised that the consent hereby granted is only valid for a period of two years commencing from the date permission is granted. The works for this consent may only be carried out once unless stated otherwise by condition.
2. This permission does not affect any private property rights and does not authorise the Applicant to carry out work on land outside of their control. The Applicant is therefore required to obtain the landowners consent prior to commencing any works.
3. It is a criminal offence to disturb or harm bats, or to damage, destroy, or obstruct a roost. Therefore, if the tree is mature and has hollow cavities, is covered with ivy, or has a suitable habitat in which bats may roost, the affected tree(s) should be surveyed for bats before any work is carried out.
4. The Wildlife and Countryside Act 1981 offers protection to wild birds, their eggs and nests. It is an offence for any person to intentionally take, damage or destroy the nest of any wild bird while it is in use or being built or to take or destroy the egg of any wild bird. All works to trees should therefore be done outside the nesting season (i.e. between the end of August and beginning March), unless carefully checked beforehand by a suitably qualified person. If nesting birds are present, work must be postponed until the young have left the nest.
5. You are advised that if a tree in a conservation area is removed, uprooted or destroyed without permission, in contravention of Section 211 of the Town and Country Planning Act 1990, the landowner is placed under a duty to plant another tree of an appropriate size and species in the same or similar position as soon as they reasonably can.