

Eastleigh Borough Council Tree Preservation Order and Conservation Area Assessment Form

Application Number	T/24/97275
Surveyor	Charlotte Holloway
Address	LINCOLNS COPSE TO THE SOUTH OF MAYPOLE VILLAS, ALLBROOK, EASTLEIGH, SO50 4LN
Proposed work	3 no. Ash (T1131, T1132 & T1135) - Remove. 1no. Oak (T1133) - Remove. 2no. Western Red Cedar (T1136 & T1137) - Remove. Following a tree condition survey, paying particular attention to any features that may pose a significant hazard to persons or property. The loss of the 6 trees will have an insignificant impact upon the amenity offered by the woodland.
Assessment Date	20/05/24
Officer comments	The trees all bound Lincoln's Copse and are mature trees prominent in the landscape. They offer high levels of visual amenity and can be seen from Pitmore Road. It is noted that the development adjacent to these trees is recent and that it was deemed acceptable by the Planning Inspectorate to allow properties to be constructed adjacent to these trees. The location of the properties is likely to apply pressure to trees within the Copse. This is notable through the applicant proposing to remove 6 substantial trees from the woodland edge. Not all trees of merit were included within the tree report submitted withing the planning application for the properties. Notably tree 1132 was omitted. Because of the amount of timber proposed to be removed from this woodland setting, the LPA must bear in mind the requirements of a felling licence. It is my opinion that the proposed work would not fall under S3(b) of the Forestry Act. Where a felling licence is required, the LPA cannot entertain a TPO application under S15(5) and should refer the applicant to apply to the Forestry Commission for a felling licence. The applicant has stated that S9(4)(a) and (b) are applicable to these trees, therefore, are exempt from requiring a felling

	licence. The applicant is reminded that it is up to the person carrying out any felling to provide suitable evidence that one of the various exemptions can be relied upon. It is my opinion that these trees are not exempt, and their removal requires a felling licence. S9(4)(a) states that a felling licence is not required “for the prevention of danger or the prevention or abatement of a nuisance”. The applicant has not raised a concern relating to nuisance, therefore, this element is not applicable. It is accepted that wording “for the prevention of danger” differs slightly between the Forestry Act and the Town and Country Planning Act, with the latter requiring the tree to have become dangerous. S9(4)(b) states that a felling licence is not applicable where felling “is in compliance with any obligation imposed by or under an Act of Parliament, including this Act”. The applicant has not cited which Act they believe applicable. It could be presumed that the applicant refers to the Occupiers Liability Act, which could mean the owner liable in negligence where they note a dangerous tree and do not act. For felling to be exempt from requiring a felling licence, it is necessary to produce strong evidence of the appreciable or practical danger. It is my opinion that the evidence within this application does not support felling of these trees under the exemptions S9(4)(a) and S9(4)(b) or S3(b). However, given the written declaration in the report that the applicant believes the work to be exempt, the potential difference in definitions regarding ‘dangerous’ between the relative legislation – the obvious exemption that the applicant is referring to given the justification in this TPO application – and after discussion with senior management, the LPA will consider the application. The applicant has stated that there have been failures within the woodland, and whilst this is not disputed, it does not always render surrounding trees to be dangerous. Where trees are subject to new exposure, lesser works could be explored.
--	---

	The applicant has stated bark death as the reason for felling tree 1131. It should be noted that this tree is an oak and not an ash as documented. The bark death was noted at the time of site visit and whilst more evidence to support the trees removal would usually be required to support the trees removal under TPO regulations, removal of this tree should not be objected to. Decay and fruiting fungal bodies have been a discussion point within the report, however, most of the species listed have not been observed, therefore, their inclusion in the supplied report bears little relevance. <i>Inonotus hispidus</i> was observed on ash 1132. Branch failures were noted in the locality of the fruiting body. The extent of any decay has not been quantified or provided. It is noted that tree dimeters have not been included within the supplied report, therefore it is not clear if the tree would qualify as “notable” and/or veteran, which would require justification as to why felling is the only reasonable option. Given this tree’s prominence in the landscape, its overall size, and the presence of habitat features, the request to remove this tree has not been justified. The applicant may wish explore lesser works, where there is insufficient evidence to support tree removal within any future applications. The applicant refers to significant decline of trees, including “reduced leaf density, yellowing foliage, and small sized foliage”. The site visit was undertaken in January and the trees are deciduous, therefore, comments relating to foliage size and colour bear little relevance to this application. Whilst some trees are noted to have some dead wood (primarily the oaks), this is typical for trees of their age and forms part of the natural aging process. Deadwood within a canopy does not justify whole tree removal. It can be removed under TPO regulations without requiring consent. Included unions have been cited as the reason for removal of the two cedars. These trees do not exhibit features that would cause concern at present. The aspect of one union is such that failure from the union is very unlikely to ever pose a risk to any residential property.
--	---

	The applicant has discussed ash dieback within their report, however, no trees are documented to have ash dieback. Beyond monitoring of trees, this paragraph has little relevance. In conclusion, the applicant has not provided sufficient evidence, as required under Regulation 16(1) of The Town and Country Planning (Tree Preservation)(England) Regulations 2012, to support removal of most of the trees. The application to remove all six trees has not been justified. REFERENCES; Mynors, C., Hall, S. and Nicholls, E. (2022). The Law of Trees, Forests and Hedges. 3rd ed. Sweet & Maxwell.				
Decision	Consent	Refuse	Part consent/ Part refuse	Invalid	Conservation Area
					Raise no objection
			X		
Decision notice	CONSENT: 1 no. oak (T1131) - Remove REFUSE: 2 no. Ash (T1132 & T1135) - Remove. 1no. Oak (T1133) - Remove. 2no. Western Red Cedar (T1136 & T1137) - Remove.				
Conditions	Standard quality and time				
Notes to applicant	None				
Parish comments	None				
Public objection/ support	Support		Objection		Observation
	0		0		0
Objection/ support consideration	n/a				