

Planning Reference No:	11/3879T
Application Address:	Bottom Wood, Hatherton, Nantwich
Proposal:	Application to fell 12 protected trees (comprising of six Oak; two Beech; two Pine, one Larch and one Silver Birch) and crown lifting of other protected trees adjacent to the highway.
Applicant:	Mr Peter Jackson, Peter Jackson Developments Ltd, Field House, 597 Etruria Road, Basford, Stoke on Trent, Staffs ST4 6HP
Application Type:	Works to TPO Trees
Ward:	Wybunbury
Registration Date:	24 th September 2011
Expiry Date:	18 th November 2011.

SUMMARY RECOMMENDATION

The Committee is recommended to :

- refuse consent for the felling of Tree Nos. 1089(Pine); 1092(Oak); 1097 (Beech) and 1116 (Silver Birch)
- grant consent for the felling of Tree Nos. 1094 (Oak); 1100(Oak);) and 1119 (Pine) insofar as the works are considered in accordance with good woodland management
- allow the felling of Tree Nos. 1095(Oak); 1101 (Beech) and 1121 (Larch) and removal of deadwood from other trees insofar as these works are considered to be exempt from any requirement to obtain consent from the Council by virtue of Section 198(6)(a) of the Town and Country Planning Act 1990.
- grant consent for the crown lifting of Trees Nos. 1086 (Oak); 1087(Oak); 1090(Oak); 1093(Oak); 1096 (Beech); 1098(Beech); 1122 (Oak); 1123(Oak);1125 (Oak);1128(Oak); 1130(Oak) by variation of the application for the removal of secondary and sub lateral branches to a height no greater than 5.2 metres no further than edge of the carriageway.
- grant consent for the crown lifting of 1118(Oak) to a height of 3 metres to allow suitable clearance for pedestrians
- grant consent for the crown lifting of Tree Nos. 1089(Pine); 1092(Oak); 1097 (Beech); 1103 (Oak); 1104 (Oak) which by virtue of this recommendation were refused consent for felling or withdrawn for the purposes of felling by the Applicant, but by the reasons submitted can be mitigated by pruning of secondary and sub lateral branches to a height no greater than 5.2 metres no further than the edge of the carriageway

REASON FOR REPORT

To seek the determination of an application to fell 12 trees (comprising of six Oak; two Beech; two Pine, one Larch and one Silver Birch) and crown lifting of other trees adjacent to the highway within a woodland which is protected by the Nantwich Rural District Council (Hatherton) Tree Preservation Order 1973. This application has been called in to Southern Area Planning Committee by Cllr Clowes.

The reason for this request is because concern has been expressed by the local community about the impact of the proposals on the amenity, historic character and ecology of the woodland. In addition the woodland has been linked to previous planning applications which have been refused on appeal and more recently in respect of the granting of Forestry Commission Woodland Improvement Grant/Felling Licence proposal. It is considered that in the light of these matters it is appropriate to allow the committee to base its decisions on all the information available and be consistent in its approach to the decisions on the site.

DESCRIPTION OF SITE AND CONTEXT

The woodland known as Bottom Wood lies about 5 km south of Nantwich to at the junction of the B5071 Crewe Road and Park Lane within the rural hamlet of Hatherton. The woodland appears to be part of a larger wooded estate, its existence dating back to 1777 or earlier. The woodland is approximately 2 hectares in size and consists principally of Pine, Larch and Birch with smaller areas of Beech, and Oak part of which has a Holly under storey. A public right of way (Hatherton FP6) runs through central northern section of the woodland from Park Lane to B5071 Crewe Road along the south west boundary of 'Oak View'

The woodland is the subject of a Tree Preservation Order (TPO) which was confirmed by the Council on 20th August 1973

DETAILS OF PROPOSAL

This is an application to fell six Oak trees; two Beech trees; two Pine trees, one Larch tree and one Silver Birch tree within W1 of the Nantwich Rural District Council (Hatherton) Tree Preservation Order 1973 and the crown lifting to a height of 5.2 metres of various Oak and Beech trees adjacent to the highway and public right of way to allow safe clearance for the passage of vehicles and pedestrians. With the exception of Birch (Tree 1116) the proposed works to trees in the application has been submitted because specific areas of the woodland within which these trees stand were deemed inappropriate for inclusion within recently approved Woodland Improvement Grant/ Felling Licence proposals.

RELEVANT HISTORY

23rd March 2011 - Felling licence approved and funding secured through the Forestry Commission English Woodland Grant Scheme (EWGS) - Woodland Improvement Grant (WIG) (Ref EWGS 22325). The management aims will be to maintain Continuous Canopy Cover with a target to remove Pine in compartment 2 and create uneven aged woodland through thinning, gap creation and regeneration of local broadleaves. The current grant scheme application and felling licence work has now been completed to the satisfaction of the Forestry Commission and the Council.

P/08/0926 - Application for a detached dwelling on land adjacent to The Oaks, Crewe Road, Hatherton - Refused 24.9.2008 Appeal dismissed 4th August 2009

P/05/1602 – Outline application for one detached dwelling with detached double garage on land adjacent to The Spinney', Park Lane, Hatherton – Refused 6.1.2006

POLICIES

In deciding this application the Authority is not required to have regard to policies under the Local Plan neither is there a general duty to make their decision in accordance with that plan. Applications to carry out works to protected trees are determined in accordance national guidance found in 'Tree Preservation Orders A Guide to the Law and Good Practice' March 2000 (updated September 2008).

CONSULTATIONS (External to Planning)

None

VIEWS OF THE PARISH/TOWN COUNCIL

Hatherton and Walgherton Parish Council (Report dated 11th November 2011)
The Parish Council supports the application in accordance with the stated objectives set out in the Woodland Improvement Grant (WIG) subject to a number of conditions. These conditions are:

1. Verification of the condition of trees and suitability of the works proposed.
2. Provision of comprehensive replanting in order to maintain the special character of the woodland and ensure a sense of enclosure and reinstate tree cover lost due to felling under the WIG and the TPO application.
3. The Submission of a bat survey.
4. Disclosure of the applicant's intention for the future management of the woodlands.

Without such conditions the Parish Council would object to the application due to the adverse impact on the character and amenity within the Parish.

OTHER REPRESENTATIONS

Five letters/e mails have been received from local residents with one resident seeking assurance that approval for any works should meet the aims of the Forestry Commission and the aims of the local community. Four residents have suggested that the application be refused and their concerns in respect of the application are:

- Information on ownership given in the application is not entirely correct and that there is an intention to sell the woodland to a developer who it is suspected has commissioned the application to facilitate development.
- The line of the public footpath has been moved from that shown on the Ordnance Survey maps, and has been enclosed with wire fencing which has affected local wildlife.
- Concern that this further work proposed for the woodland edge in addition to that already approved by the Forestry Commission for the whole wood may be part of an agenda to facilitate the applicant's future development proposals.
- Felling and removal of trees dead wood will deprive the wildlife habitat of the woodland.
- Any authorised work should not be carried out without the necessary precautions to protect wildlife within the woodland (bats, badgers etc)
- The woodland has been subject to past planning applications for development and infill which have been refused on appeal.
- Silver Birch (tree 1116) which stands on the public footpath appears to be healthy and does not obstruct the footpath.
- The application form states in section 8 "condition of trees" that there are no issues with any of the trees being diseased, dying, dead or dangerous.

An independent report on behalf of one of the residents has also been submitted. The key points in this report are also précised by the Parish Council and are as follows:

- Questions the need to crown lift roadside trees to 5.2 metres as the height of overhang branches have been defined by passing traffic. Crown lifting would open up the woodland frontage and expose shallow rooted Pine trees. An alternative would be to prune selected branches that are considered to be a risk back to the roadside.
- There is no reason to remove dead trees or dead wood within woodland unless there is a liability issue.
- The pedestrian height clearance for Tree 1118 has been set at 3 metres, whilst it has been stated at 2.5 metres for other trees on the site.
- Advice from the Forestry Commission should be sought in respect of the presence of bleeding canker on Birch (Tree 1116)

APPLICANTS SUPPORTING INFORMATION

The following documents have been submitted in support of the application:

Details of Tree Inspections
Work Schedule of Trees
Summary of Trees

It is the Applicant's case that there are 11 trees where their condition has been described as poor due to their form, or a risk to the adjacent highway due to the presence of structural defects. One Silver Birch (Tree 1116) located on the public right of way is proposed for removal as it has been identified as having a poor overall condition and is infected with the disease pathogen *Phytophthora*. A further 11 trees have been identified for crown lifting over the highway to a height of 5.2 metres to allow unimpeded access for vehicles using the highway. The removal of low branches to a height of 3 metres is proposed on one Oak tree (Tree 1118) as branches are obstructing pedestrians using the public right of way.

OFFICER APPRAISAL

In consideration of this application, the Council in accordance with Government guidance contained in 'Tree Preservation Orders – A Guide to the Law and Good Practice' (March 2000) must grant consent so far as accords with good forestry practice unless they are satisfied this would fail to secure the maintenance of the special character of the woodland or the woodland character of the area (para 6.47).

Consideration of objections

Many of the objections received relate to issues outside the scope of the application, such as the line of the public footpath, the prospect of future development of the site and disclosure of future management of the woodlands. In this regard the authority can only have regard to the merits of the application as submitted and the impact any works may have on the woodland and the amenity of the area. Any future development proposals for the site will be considered at the time and determined having regard to Development Plan policies and any other material considerations.

The irregularity on the application form that states that there are no issues with any of the trees being diseased, dying dead and dangerous has been clarified by the Agent who has confirmed that this is an error on the form and that the works are to be considered for issues of safety.

With regard to concerns regarding the impact on wildlife within the woodland including bats a note to the Applicant will be included on the Decision Notice of their requirements under the Wildlife & Countryside Act 1981, Countryside & Rights of Way Act 2000 and The Conservation (Natural Habitats etc).

Regulations 1994. If bats are discovered during inspection or subsequent work, all work must cease and Natural England informed.

The concerns in respect of the removal of Silver Birch (Tree 1116), the impact of tree felling on the character of the woodland and crown lifting works are addressed below.

Proposed Work

Felling

Following a detailed inspection of the trees on site it is confirmed that in respect of trees 1095 (Oak); 1101 (Beech) and 1121 (Larch) these trees are considered to be exempt from the requirement to obtain consent by virtue of Section 198(6)(a) of the Town and Country Planning Act 1990. The Oak has been identified with extensive decay of the root/stem buttress, the Beech displays a diametral helical crack on the main stem which has occurred due to wind loading on the crown. The Larch is split at the base of the stem and has partially fallen into an adjacent Pine tree. It is concluded therefore that these trees present a potential risk to the highway and will require removal to address the common duty of care imposed on the owner of the woodland by the Occupiers Liability Act 1957.

The upper stem of Tree 1094 (Oak) is currently resting on a BT wire over the highway, as a consequence there is no satisfactory pruning solution to clear the highway. Tree 1100 (Oak) has a significant stem lean and is of poor form and severely suppressed. Tree 1119 (Pine) has lost its apical shoot, is severely suppressed and the upper stem over Crewe Road and has no particular individual merit. These three trees are authorised for removal insofar as the works are considered in accordance with good woodland management.

The Application states that Tree 1089 (Pine) is a poor specimen with a life expectancy of 0-10 years and has recommended that the tree be felled but the application does not go into any detail justification as to why the tree is of poor quality. Government advice requires that sufficient evidence is required to support the case for the proposed work. The tree is slightly crown suppressed by adjacent trees and there appears to be no evidence of any significant structural defects which would justify its removal or reduced life expectancy. The tree is a moderately prominent specimen which forms part of the continuous tree cover along Park Lane with some deadwood evident within the crown. The removal of this tree is not considered to accord with good woodland management and would be detrimental to the amenity value of the area.

The Application further states that Tree 1092 (Oak) has a life expectancy of 30-40 years and justification for removal is based upon the tree being a poor specimen and having crossing branches. However an inspection reveals the crossing/rubbing branch is on Tree 1091 (Oak) and Tree 1093 (Oak) and not

Tree 1092. It is considered that remedial pruning works could be undertaken to the affected trees to address this issue. The removal of this tree is therefore not justified in respect of the reasons submitted in support of it. Its retention is therefore in the interests of good forestry.

Tree 1097 (Beech) has been identified for removal on the basis that the tree is a poor specimen and has an included union and there is a cavity present on the tree. The application states that the tree has a life expectancy of 20-30 years. The tree is a moderately prominent specimen located on the woodland edge forming part of the continuous tree cover of Park Lane. The tree is partially suppressed by an adjacent tree and appears to be in reasonable physiological condition. There is an included union at 1 metre, however the inclusion shows no evidence of weakness at the present time. The removal of this tree is therefore considered to be premature and its retention in the interests of good forestry.

The Silver Birch (Tree 1116) located on the public right of way has been identified for removal due to the presence of bleeding canker. The Applicant has suggested that the removal of this tree may reduce the risk of healthy trees being infected, although has indicated that there is no guarantee that such measures would be successful. The tree is an over mature specimen and has two small areas of bleeding canker on the stem of the tree. The presence of the disease appears to have had no effect on the physiological condition of the tree. It should be noted that this tree was not identified by the Forestry Commission for removal as part of any phytosanitary measures under the recent Felling Licence/ WIG Scheme which covered this part of the woodland. Furthermore as there is currently no reliable evidence base as to how the pathogen spreads to other trees. The retention of this tree is therefore in the interests of good forestry.

Crown Lifting

The application identifies the crown lifting (to a height of 5.2 metres) of nine Oak trees and two Beech trees which are overhanging the highway and the crown lifting of one Oak tree (to a height of 3 metres) over the public right of way. Section 130 of the Highways Act 1980 places a duty on the Local Authority to protect the rights of the public to use and enjoy the highway, although the standard for minimum clearances over the carriageway of a public road is actually defined within the 'Design Manual for Roads and Bridges' which specifies that a vertical clearance of 5.2 metres shall be maintained to allow sufficient clearance for vehicles which might ordinarily be expected to use the highway for access.

Whilst there is evidence of some damage to lower lateral branches of trees from passing high sided vehicles, the majority of overhanging branches provide sufficient clearance over the highway. It is noted however that during the summer branches will likely be lower due to the leaf cover and this has to be taken into consideration when specifying work. With regards to the issue that crown lifting could create gaps in the unbroken line of branches which forms part of the character of the woodland edge, it is considered that this

matter could be addressed by modifying the crown lifting to allow pruning of selected branches to the edge of the carriageway rather than back to the stem of the tree to maintain a clearance of 5.2 metres. This requirement however should not detract from the owner's duty of care to ensure the safe passage of vehicles using the road.

The crown lifting of the Oak over the footpath is deemed to be minor works and in accordance with accepted arboricultural best practice

Replacement Planting

The applicant has indicated his intention to carry out replacement planting of Oak, Beech and Birch in his application. The authority when granting consent for felling of woodland trees cannot impose conditions requiring replacement or replanting. Instead it has the power to issue a replanting direction as a result of Section 198(3)(b) of the Act where the felling of trees are in the course of forestry operations. The provision of a replacement direction enables additional provisions to be included than might be appropriate in a condition. Under Section 204 (2) of the Act the LPA are liable to pay compensation for any loss or damage caused or incurred as a result of complying with the direction.

Removal of deadwood

The removal of deadwood may be removed under Section 198(6) (a) of the Town and Country Planning Act 1990 as this operation is deemed to be exempt from any requirement to obtain consent from the Council. These works are restricted to those trees immediately adjacent to the highway and the public right of way where the deadwood may present a risk.

OTHER RELEVANT INFORMATION

Following a meeting on site and subsequently agreed by e-mail on 22nd November 2011, the Agent has confirmed his intention to withdraw Oak trees 1103 and 1104 for the purposes of felling and that the reasons submitted will be mitigated by pruning to achieve the benefit of tree retention.

RECOMMENDATION

The Committee is therefore recommended to partly refuse and partly approve the application

CONDITIONS AND REASONS FOR REFUSAL

1. Refuse consent for the felling of Tree Nos. 1089(Pine); 1092(Oak); 1097 (Beech) and 1116 (Silver Birch)

Reason for refusal: The removal of these trees would be contrary to the interests of good forestry and the special character of the woodland.

Grant consent for the felling of Tree Nos. 1094 (Oak); 1100(Oak);) and 1119 (Pine) insofar as the works are considered in accordance with good woodland management.

2. Grant consent for the crown lifting of Trees Nos. 1086 (Oak); 1087(Oak); 1090(Oak); 1093(Oak); 1096 (Beech); 1098(Beech); 1122 (Oak); 1123(Oak);1125 (Oak);1128(Oak); 1130(Oak) by variation of the application for the removal of secondary and sub lateral branches to a height no greater than 5.2 metres from the edge of the carriageway.
3. Grant consent for the crown lifting of Tree Nos. 1089(Pine); 1092(Oak); 1097 (Beech); 1103 (Oak); 1104 (Oak) which by virtue of this recommendation were refused consent for felling or withdrawn for the purposes of felling by the Applicant, but by virtue of the reasons submitted can be mitigated by pruning of secondary and sub lateral branches to a height no greater than 5.2 metres from the edge of the carriageway.
4. Grant consent for the crown lifting of 1118(Oak) to a height of 3 metres to allow suitable clearance for pedestrians.

Subject to the following conditions:

The works hereby authorised shall be carried out at least to the standards as specified within BS3998:2010Tree Work Recommendations.

Reason : To ensure that the works are carried out in the appropriate manner having regard to accepted arboricultural best practice and in the interests of the heath and visual amenity of the tree(s).

The works hereby authorised shall be carried out within 2 years of the date on which the consent is granted.

Reason: To avoid confusion over unimplemented consents

The Local Authority shall be advised of the date of commencement of the works hereby approved.

Reason: To ensure appropriate monitoring and compliance of the local amenity.

Replanting Direction:

Direction under Article 6 of the Model Order

The owner of the land shall subject to the provisions of the Order and Section 175 of the Act, replant the said land in accordance with the direction require the planting of the following:

30 Oak and Beech (600-900mm in height) to be planted within the woodland known as Bottom Wood, Hatherton adjacent to Park Lane (positions to be agreed with the LPA).

Trees shall be suitably protected with guards to prevent damage from rabbits

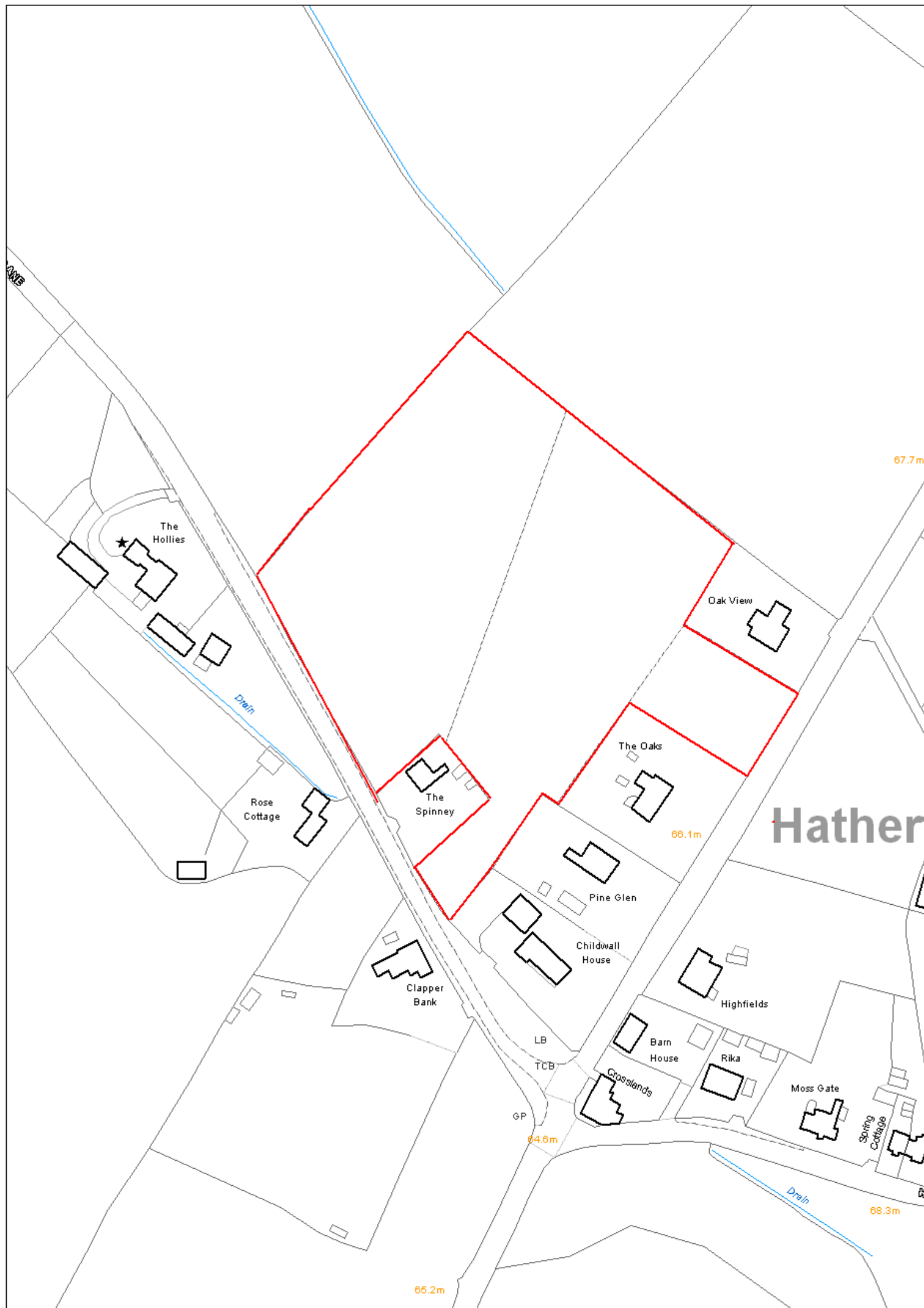
The works shall be carried out within the first planting season following the removal of the trees specified.

Exempted Works

Allow the felling of Tree Nos. 1095(Oak); 1101 (Beech) and 1121 (Larch) and removal of deadwood from other trees insofar as these works are considered to be exempt from any requirement to obtain consent from the Council by virtue of Section 198(6)(a) of the Town and Country Planning Act 1990.

Note to Applicant

INFORMATIVE: Under *The Wildlife & Countryside Act 1981, Countryside & Rights of Way Act 2000, The Conservation (Natural Habitats etc) Regulations 1994 and any future revisions*, it may be an offence to disturb bats (and their roosting sites) and breeding birds. It is your (and your Contractors) responsibility to ensure that all tree felling & pruning works are carried out in accordance with the above legislation. If bats are discovered during inspection or during work all work must cease and Natural England informed. Please contact the Councils Nature Conservation Officer, Mr J Baggaley (01625) 383742), if you require further guidance.



Bottom Wood, Hatherton, Nantwich