

Supplementary Planning Guidance

TREE PROTECTION

City Wide Guidance

(Adopted: 13 October 2003)



Leicester
City Council

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I Introduction

1.1 Trees enhance the urban environment and they are appreciated by those who live and work in the city. They add character to the townscape and bring maturity to new developments. They soften the hardness of buildings, screen poor views and noise, support wildlife, and filter dust and pollutants. They provide focal points and green backdrops. They can add value to property.

1.2 Inappropriately located trees, and damaged or diseased trees, can give rise to resentment and in some cases to safety concerns. They make developments less attractive.

1.3 Trees are easily damaged on development sites, and their roots are particularly vulnerable.

1.4 It is easy to draw plans marked “trees to be retained” but it is much more difficult to ensure that good, healthy trees are left unscathed where they will enhance new developments. This requires knowledge, expertise, good planning and co-operation between professionals.

1.5 The City Council’s general policies for trees and development are contained in the Replacement City of Leicester Local Plan, which was placed on second formal deposit in summer 2003 and which will be the subject of a Public Local Inquiry in spring 2004.

1.6 Policy GE19 relates to the protection of trees. It states that, “*where development proposals are received that may affect trees protected by a Tree Preservation Order or in Conservation Areas, the effects of the development on the trees and their amenity value will be a major consideration. This includes both the possibility of damage to the trees during development operations and the long-term effects of the proposed development on the setting of trees. It can include trees outside the confines of the development site. Trees retained on development sites must be adequately protected during the whole of the construction process. Where development results in the loss of any trees, appropriate replacement planting will be required*”.

1.7 It states that further advice will be provided in Supplementary Planning Guidance. The Replacement City of Leicester Local Plan is a continuation of the adopted City of Leicester Local Plan, which was formally adopted in 1994.

1.8 The aim of this Supplementary Planning Guidance is to provide information to developers and guidance to decision makers to help to ensure that where new development is proposed the long term future of valuable trees is secured so that they can continue to provide benefits.

1.9 It is based on current best practice as set out by the Government and the arboricultural and development industries.

1.10 It is intended to be easy to use. It does not provide a full statement of the law. You should consult a solicitor if you are unsure about your legal rights or obligations.

1.11 The Guidance has been subject to formal consultation - a list of consultees is given at Appendix 3. All representations received in response to consultations have been considered

and appropriate amendments have been made. The Guidance was formally adopted by the City Council as Supplementary Planning Guidance to the Local Plan on 13th October 2003.

1.12 A series of Supplementary Planning Guidance notes has been published by the City Council, including city-wide guidance on nature conservation and on open space provision (draft) and guidance on various specific sites.

1.13 This Guidance is in accordance with current published advice, such as that produced by the Government, the British Standards Institution and the Arboricultural Advisory and Information Service. Any changes to that advice will be incorporated into future editions of this Guidance.

2 Tree Protection Legislation

2.1 An outline of tree protection legislation is given in a leaflet published by the Department of Transport, Local Government and the Regions entitled *Protected Trees, a Guide to Tree Preservation Procedures*. Copies are available from the City Council, free of charge.

2.2 Trees are normally the property of the owner of the land on which they stand, and their owner is responsible for them, including their safety, whether or not they are protected.

2.3 Trees can be protected under the law by Tree Preservation Orders (TPOs). TPOs are made by the local planning authority to protect individual trees and tree groups. It is an offence to fell, top, lop or wilfully damage any tree protected by a TPO without consent from the local authority unless an exemption can be shown to apply. Protection includes protection from damage to roots. Exemptions include works to dead or dangerous trees, and works to keep the public highway clear. It is for the person carrying out the works to prove that an exemption applies.

2.4 Trees in Conservation Areas are also protected. Conservation Areas are designated areas of architectural or historic interest, and trees are considered integral to that interest. All trees of trunk diameter 75mm or more (measured at 1.5m above ground level) are protected in a similar way to that which applies to trees covered by TPOs.

2.5 Penalties for carrying out unauthorised works to trees protected by TPOs or in Conservation Areas can be severe, currently a fine of up to £20,000 per offence if convicted in the magistrates' court and an unlimited fine if convicted in the crown court.

2.6 Trees can also be protected by conditions attached to planning permissions. When planning permission is granted for a development, conditions can be imposed which become effective when the permission is implemented. These might include the retention of trees, hedges or shrubs, and their protection during the development process. If a condition is not complied with an enforcement notice or a breach of condition notice may be served by the local planning authority to ensure compliance.

2.7 The City Council will be able to tell you if any tree is protected (tel. 0116 252 7263) or if planning conditions have been imposed on any development (tel. 0116 252 7248).

2.8 Application forms for consent to carry out works to protected trees are available from the City Council. There is no fee for an application.

2.9 In some cases felling licences must be obtained from the Forestry Commission before trees are felled. This does not apply to trees in gardens and it would not normally apply to most of the works carried out to trees in the city. If in doubt contact the Forestry Commission. (Appendix 2).

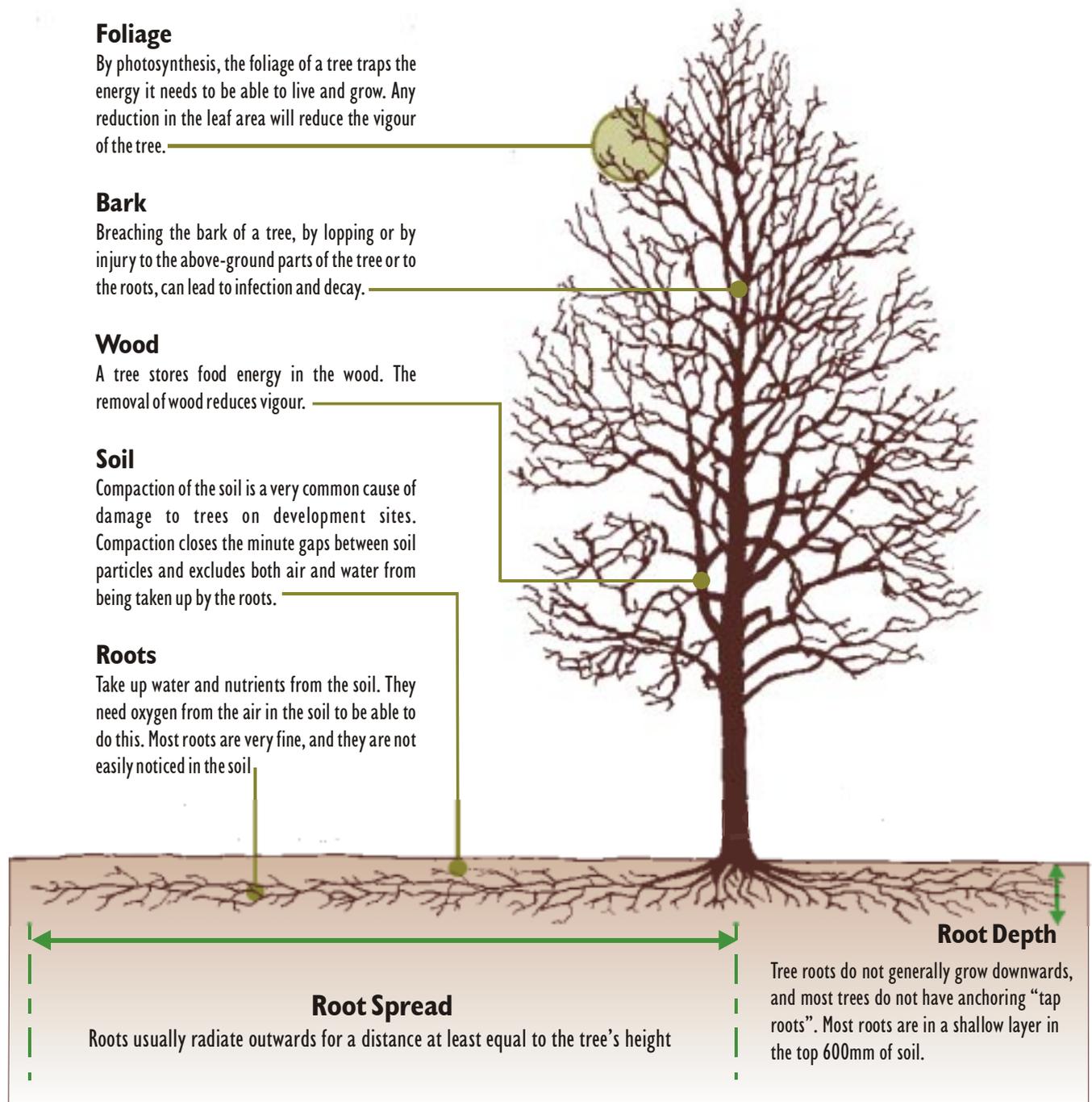
3 How Trees Work and How They Can Be Damaged

3.1 Trees are living things and can be damaged easily. Because wood is strong and trees grow slowly it often takes a long time for damage to show itself.

3.2 It is easy to see when parts of a tree above ground have been damaged on a development site. Accidental damage by vehicles and machinery might include bark damage to the trunk, or branches being torn off. Such damage might immediately spoil the look of a tree and leave it vulnerable to infection by decay fungi.

3.3 Damage to the roots of a tree is at least as serious, but often is not immediately noticeable. Wounding the bark of larger roots may lead to infection by decay fungi and may affect a tree's stability in the ground. Killing smaller diameter roots will decrease a tree's ability to take up

Figure 1. How Trees Work and How They Can Be Damaged



water and nutrients. This will reduce the tree's vigour and lead to die-back in the crown. Because the tree has reserves of stored food energy in the wood, it may be several seasons before the damage to roots shows in the parts of the tree above ground.

3.4 The great majority of roots are close to the surface, in the top 600mm of soil. Roots can be severed during the excavation of trenches or the scraping of topsoil, or they can be killed indirectly.

3.5 Probably the most common cause of damage to trees on development sites is soil compaction. Compacting the soil squeezes out the tiny spaces between the soil particles that hold air and water. The roots suffocate. A single pass of a heavy vehicle over the rooting area of a tree can lead to irreversible damage, particularly if the soil is wet.

3.6 Tree roots grow near to the surface, where there is air and nutrients and where they are best placed to take up rain water. Increasing the depth of roots by mounding on top of the existing level damages them by excluding water and air. Air and water are also excluded if impervious surfacing is laid over the rooting area.

4 Requirements Where Development is Proposed

4.1 General

4.1.1 Where development is proposed that may affect important trees the presence of the tree should guide the design process from the start. Surveys should identify the trees best suited for retention and those that would need to be removed. Unrealistic proposals to retain trees are misleading for those consulted about planning applications, they can be detrimental in the long term to both the trees and the development, they can give rise to safety concerns and these problems can be expensive and difficult to resolve once the new development is in place.

4.1.2 Trees and their roots do not respect property boundaries. It must be remembered that trees on adjacent sites, and trees in the street, may be affected by development proposals.

4.1.3 Where trees are to be retained in proximity to development it must be shown that it is possible, within the constraints of the site, for the buildings to be built, the accesses and underground services to be provided, for all the necessary materials to be stored and for any temporary huts and conveniences to be sited, while at the same time providing an adequate area of undisturbed space around the trees.

4.1.4 Even when a tree has been successfully retained on a development site and has come through the construction process unscathed, it may still be under threat. Trees close to buildings can be viewed with apprehension. Where trees stand next to buildings used for work or leisure they are generally welcomed by the occupiers of the property. This is often not the case with trees next to houses.

4.1.5 Trees can block light to windows, give rise to safety fears, cause difficulties for gardeners, and can generally be unwelcome to the occupiers of new development. They can also continue to grow. It is most important that the long term and indirect consequences of permitting new development are considered at the design stage.

4.1.6 The following factors will be taken into account in the overall consideration of a proposal:

- the size of trees when fully grown
- the use of buildings (eg. residential, workplace)
- the probable occupancy of the property (rented or owner-occupied)
- the relative positions of trees to buildings (north, south, east or west)
- the proximity of trees to windows in habitable and other rooms
- the intensity of use of the land close to trees
- crown density of the tree species
- the appropriateness of the species for the site, including any propensity to shed honeydew or cotton seeds or to extract large amounts of water
- the probable remaining healthy lifespan of the tree

4.1.7 In general, it is better for retained trees to be located in public open space than in private gardens.

4.1.8 Developers should ensure that the presence and future growth of trees is taken into account in drawing up schemes for the siting and design of security cameras and street lights.

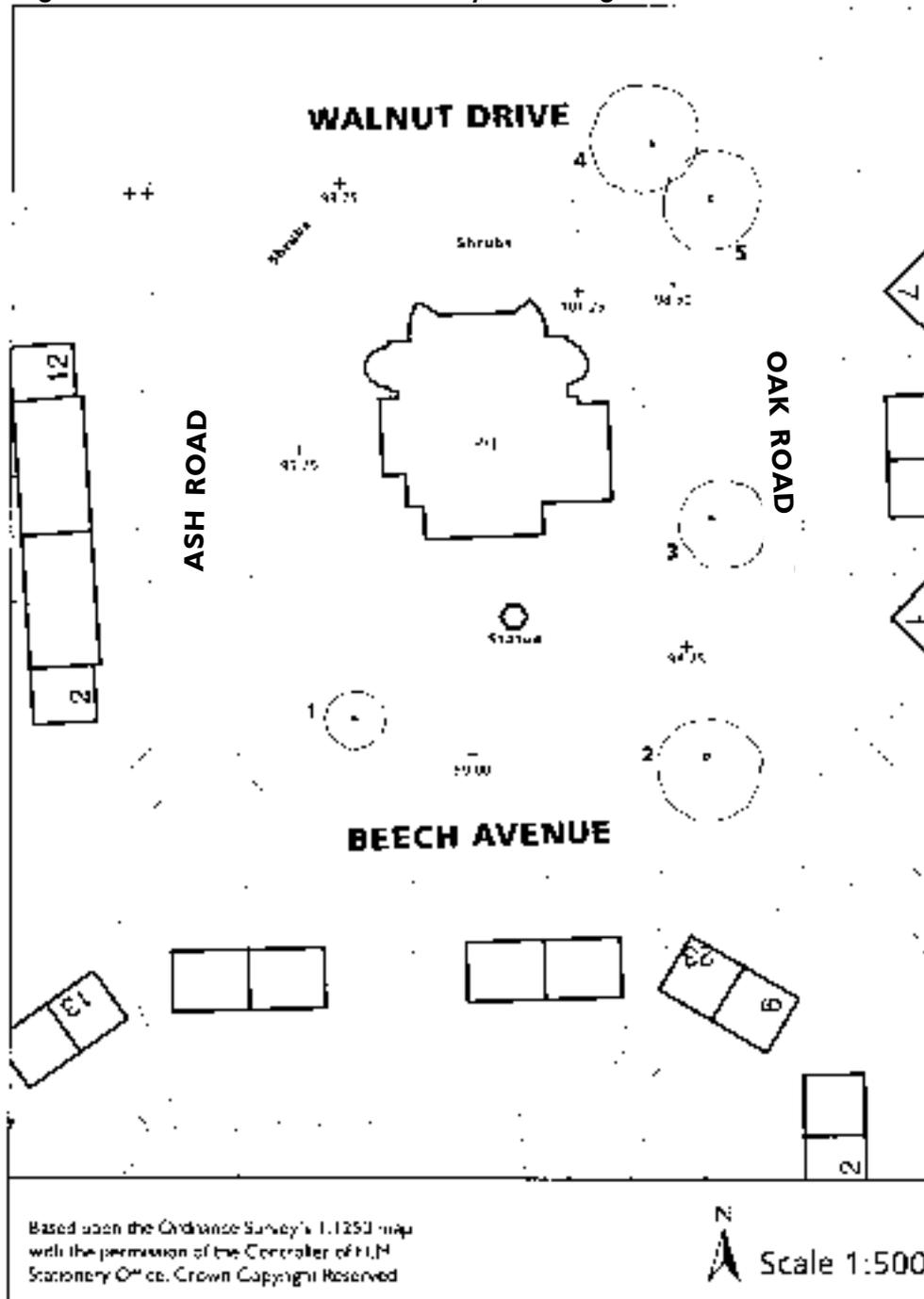
4.1.9 Detailed guidance on the protection of trees on development sites is given by the British Standard BS5837:1991. The requirements below are based on that guidance. The British Standard is currently under review and is likely to be amended within the next few years. Tree protection measures should be in line with up to date best practice, and so those outlined below should be updated if and when the new guidance is published.

4.2 Information that developers will be required to provide

1. Land and Tree Survey Drawings

- Usually at 1:500 scale
- Identifying all existing buildings and site features
- Identifying accurately to within 0.5m the position of each tree
- Marking spot heights to show the existing lie of the land

Figure 2. A Land and Tree Survey Drawing



2. A Schedule of Trees, identifying

- species
- height
- trunk diameter measured at 1.5m above ground level
- age class
- condition
- form
- vigour
- any defects
- life expectancy
- desirability for retention.

Figure 3. A Schedule of Trees

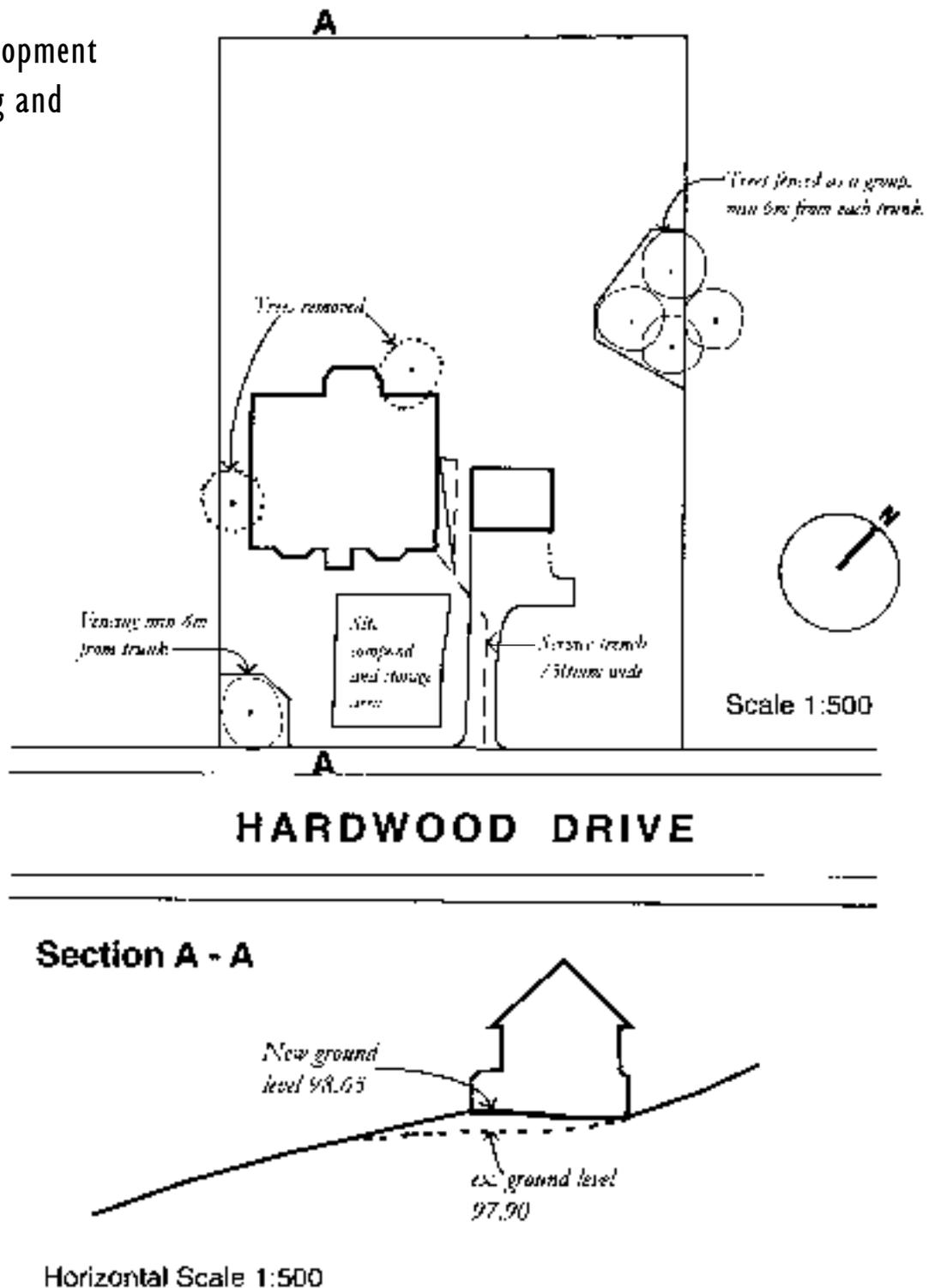
| No. | Species | Height (m). | Trunk Diameter (cm) | Crown Radius (m) | Age Class | Condition | Form | Vigour | Defects | Life Expectancy (years) | Category* |
|-----|---------|-------------|---------------------|------------------|-----------|-----------|------|--------|-----------------------------------|-------------------------|-----------|
| 1 | Rowan | 9 | 20 | 4 | Mid | Good | Good | Normal | None significant | 30 | B |
| 2 | Oak | 18 | 80 | 4N 5E 6S 5W | Mature | Good | Good | Low | Some decay at side of shed branch | 50 | A |
| 3 | Oak | 17 | 82 | 4N 5E 5S 4W | Mature | Good | Good | Low | Some crown die-back | 50 | A |
| 4 | Oak | 19 | 83 | 6 | Mature | Good | Good | Normal | None significant | 50 | A |
| 5 | Birch | 13 | 19 | 6 | Mid | Moderate | Poor | Low | Suppressed by oak. Lost leader | 10 | C |

**This relates to the tree retention categories recommended by British Standard BS 5837, paragraph 5.2.*

3. Development Proposal Drawings, identifying

- all proposed buildings, structures, and hard surfaces
- all service trenches, including width
- any changes in land level, temporary or permanent
- where all plant, materials and equipment are to be stored and where any temporary buildings are to be sited
- all trees to be retained
- any trees to be removed
- all works to be undertaken to retained trees (in a schedule).
- location of protective fencing

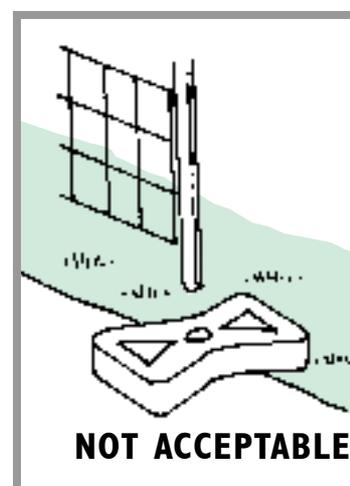
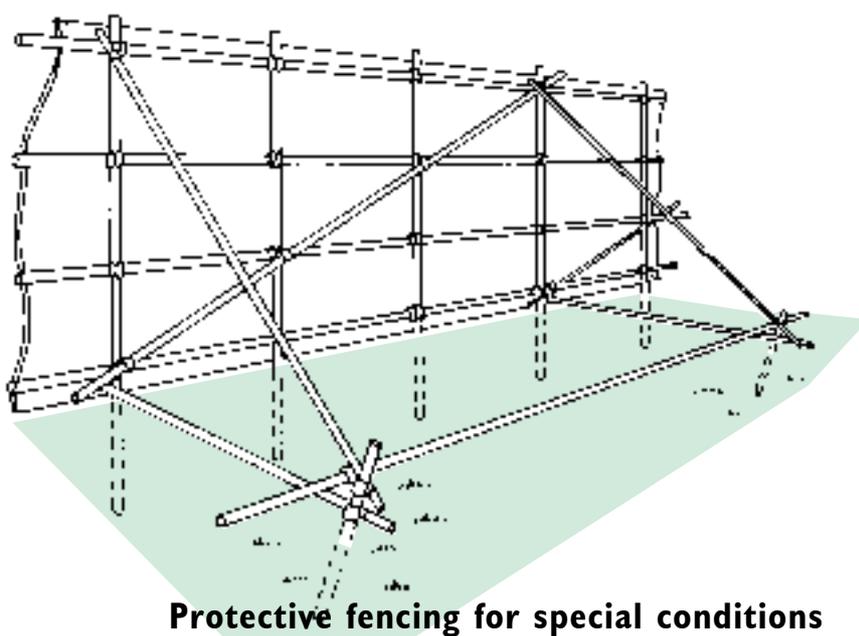
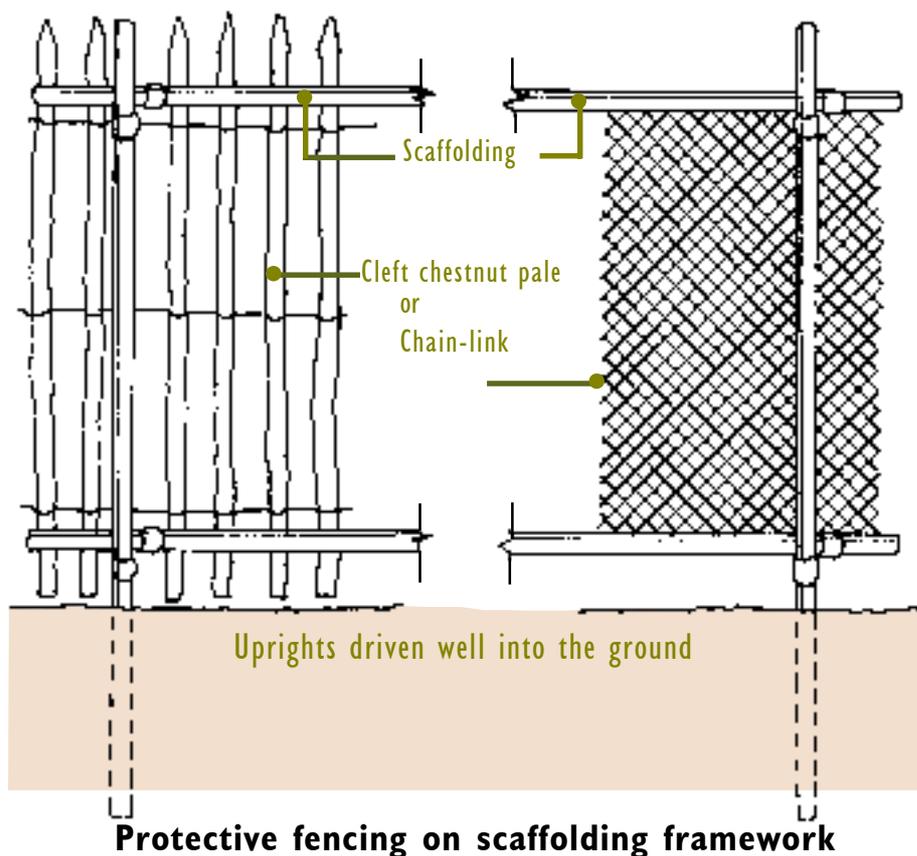
Figure 4. A Development Proposal Drawing and Section



4.3 Tree Protection

4.3.1 If trees are to be retained successfully on development sites they must be adequately protected. This involves providing robust fencing, which cannot easily be moved by a contractor on site. It is not acceptable to provide free-standing chestnut pale or “heras” fencing, or to use tape or mesh around protected trees. All fencing should accord with the British Standard, including a strong framework with uprights driven well into the ground. Signs should be used to warn contractors to keep out of protected areas.

Figure 5. Examples of Protective Fencing



4.3.2 Protective fencing around trees should be erected before the commencement of any development, including any demolition or site preparation works, and should remain in place until all building and engineering operations have been completed. It must not be re-positioned or removed during works, even for a short period. The Council should be contacted by the developer after the fencing has been erected, and at least 48 hours before development is commenced, in order that it can be checked.

4.3.3 British Standard BS5837 provides a table to show the protection distances required around trees to protect them during construction works. The distances are calculated according to the age, size and vigour of the tree. The extent of the area around the trees protected by fencing must be at least that recommended by the British Standard. As a general guide the radius of the fenced area should be equal to the full canopy spread of the tree or half its height *whichever is greater*.

4.3.4 It is not practicable for fenced areas around trees to extend right up to buildings under construction. A working area of a minimum width of 1.5m around buildings will be required. The minimum distance between existing trees and new buildings will, therefore, be the space required to be fenced plus 1.5m.

4.4 Reduction of protection distances

4.4.1 The British Standard states that the protection distances are minimums, but it also states that in certain circumstances the distances can be reduced by up to one third, on one side only, if they are correspondingly increased in the other directions. This reduction will only be permitted in exceptional circumstances. The rooting area of the tree to remain undisturbed should be growing in ideal conditions, free from any structures, hard surfaces and significant competition, and it must be within the site owner's power to ensure that those conditions remain for a significant period of time after completion of the development.

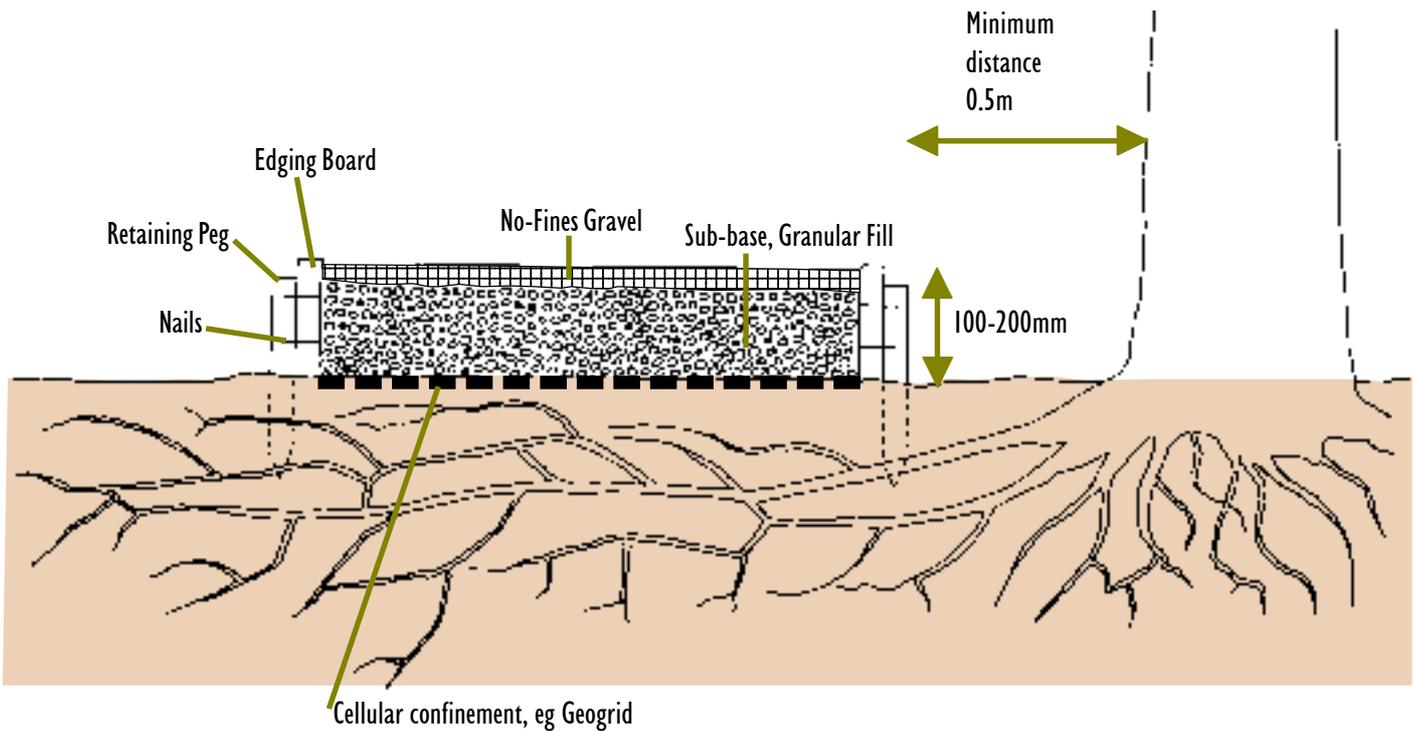
4.5 Hard surfaces

4.5.1 Development schemes sometimes involve laying hard surfaces such as driveways and parking areas close to protected trees. Wherever practicable these should be located outside the protection areas. However, it is possible to provide hard surfacing close to trees without causing significant damage to them, and advice is given by the Arboricultural Advisory and Information Service in the publication Arboricultural Practice Note 1 (Appendix 1). Such surfaces should be porous, a maximum of 200mm deep, and their construction should be using a no-dig method, on top of the existing surface. It will normally be necessary to lay the hard surfacing after the rest of the development has been completed and the protective fencing has been permanently removed. It is not acceptable for the fencing to be removed during the construction process to allow access for the laying of surfacing.

4.5.2 Any specification for a no dig driveway or parking area should include a method statement detailing how it will be constructed. The statement should include:

- details of all existing and proposed levels
- details of the cellular confinement system and edging restraints
- details of the sub-base construction and how this will be built up without trafficking over unprotected ground.

Figure 6. Hard Surfacing Using the 'No Dig' Method



5 Consultation

5.1 Government guidance states that the weight of Supplementary Planning Guidance as a material consideration in making planning decisions is increased if consultation has been carried out, and if the guidance has been the subject of a council resolution.

5.2 This document has been subject to consultation with local developers, tree contractors, local and central government departments and the professional body of arboriculture. It has been amended in the light of responses received and has been formally adopted by resolution of the Council.

6 Conclusion

6.1 Trees have great value and mature trees take a long time to replace. Leicester City Council is committed to ensuring that trees of high amenity value are retained for the enjoyment of all its citizens. Retaining trees undamaged close to new buildings is difficult and needs great care. Developers have a crucial role to play in achieving this aim. This guidance is intended to help by setting out what the Council expects of them.

APPENDIX I

Publications

The Law

The Town and Country Planning Act 1990, Part VIII

The Planning and Compensation Act 1991, Section 23

The Town and Country Planning (Trees) Regulations 1999

These Acts and Regulations give the law relating to the protection of trees under the planning system.

The Law of Trees, Forests and Hedgerows by Charles Mynors, published by Sweet and Maxwell
This book gives a detailed and wide-ranging account of the law relating to trees and hedgerows, including many summaries of important court cases.

Protected Trees: a Guide to Tree Preservation Procedures by the Department of Transport, Local Government and the Regions

This leaflet summarises tree protection law and procedures. Copies are available free of charge from the City Council.

Tree Preservation Orders: a Guide to the Law and Good Practice by the Department of Environment, Transport and the Regions

This booklet summarises the law and sets out the government's policy advice on the tree preservation order system.

Guidance

British Standard 5837. Trees in Relation to Construction by the British Standards Institute

This important guide provides advice on the range of issues relating to trees on development sites, including how surveys should be carried out and how trees should be fenced during construction.

British Standard 3998. *Tree Work* by the British Standards Institute

This gives advice about all aspects of tree surgery.

Arboricultural Practice Note 1: Driveways Close to Trees by D Patch and M Dobson of the Arboricultural Advisory and Information Service

This leaflet gives technical advice about laying hard surfacing over the rooting areas of trees.

City Council Policies

The Replacement City of Leicester Local Plan 1996-2011 and the City of Leicester Local Plan 1994 by Leicester City Council

These statutory documents give the City Council's policies relating to all planning matters. They are available from the City Council at the price of £20 each (+£5 p&p)

Trees: Enforcement Policy by the Environment, Regeneration and Development Directorate of Leicester City Council

This short document sets out the Council's policies and procedures for investigating and taking action against alleged contraventions of tree protection legislation. Copies are available from the Urban Design Group of the City Council, free of charge.

APPENDIX 2

Contacts

Leicester City Council Urban Design Group,
New Walk Centre,
Welford Place,
Leicester
LE1 6ZG
Tel 0116 2527263 Minicom 0116 252 7222

Arboricultural Advisory and Information Service
Alice Holt Lodge
Wrecclesham
Farnham
Surrey
GU10 4LF
Tel 01420 22022 Tree helpline 0897 161147

Arboricultural Association
Ampfield House
Romsey
Hants
SO51 9PA
Tel 01794 368717

British Standards Institution
2 Park Street
London
W1A 2BS

The Forestry Commission
Central Office
Station Road
East Leake
Leicestershire.
LE12 6LQ
Tel 01509 582334

Government Office for the East Midlands
The Belgrave Centre
Stanley Place
Talbot Street
Nottingham
NG1 5GG
Tel 0115 9712485

Royal Institute of Chartered Surveyors
12 Great George Street
Parliament Square
London
SW1P 3AD
Tel 020 72227000

APPENDIX 3

List of Consultees

Directorates of Leicester City Council

Leicestershire County Council

Government Office for the East Midlands

Arboricultural Association

Local Tree Contractors and Consultants approved by the Arboricultural Association

Local Developers

A full list of consultations and responses is available from the Urban Design Group of the City Council.