

PLANNING REGULATORY BOARD

Date:- Thursday, 21 February 2019 **Venue:- Town Hall, Moorgate Street, Rotherham. S60 2TH**
Time:- 9.00 a.m.

Meetings of the Planning Board can all be viewed by live webcast by following this link:-
<https://rotherham.public-i.tv/core/portal/home>

AGENDA

1. To consider whether the press and public should be excluded from the meeting during consideration of any part of the agenda.
2. To determine any items which the Chairman is of the opinion should be considered as a matter of urgency.
3. Apologies for absence (substitution)
4. Declarations of Interest (Page 1)
(A form is attached and spares will be available at the meeting)
5. Minutes of the previous meeting held on 31st January, 2019 (Pages 2 - 3)
6. Deferments/Site Visits (information attached) (Pages 4 - 5)
7. Development Proposals (report herewith) (Pages 6 - 12)
8. Report of the Assistant Director of Planning Regeneration and Transport (herewith) (Pages 13 - 27)
9. Updates
10. Date of next meeting - Thursday, 14th March, 2019, commencing at 9.00 a.m.

Membership of the Planning Board 2018/19

Chairman – Councillor Sheppard
Vice-Chairman – Councillor Williams
Councillors Andrews, Atkin, Bird, D. Cutts, M. S. Elliott, Fenwick-Green, Sansome, Steele, John Turner, Tweed, Walsh and Whysall.



SHARON KEMP,
Chief

Executive.

Planning Regulatory Board 'Public Right To Speak'

REGISTERING TO SPEAK

The Council has a "Right to Speak" policy, under which you may speak in the Planning Board meeting about an application. If you wish to do this, it is important that you complete a tear-off slip and return it with any written comments, within 21 days of the date of the notification letter back to the Planning Department.

Your comments will be made known to the Planning Board when it considers the application and you will be written to advising of the date and time of the Planning Board meeting to exercise your right to speak

WHEN YOU ARRIVE

If you wish to speak in the meeting, please try to arrive at the venue ten minutes before the meeting starts. The reception staff will direct you to the Council Chamber.

In the Council Chamber, please give your name to the Board Clerk (who will have a checklist of names derived from the agenda). The Clerk will direct you to the seating reserved for people who wish to speak.

The agenda is available on line at least five days prior to the meeting, and a few copies will be made available at the meeting, so you can read the reported relating to the application which concerns you and see where it comes in the agenda.

The Council Chamber is equipped with microphones and a hearing loop

The meeting is being filmed for live or subsequent broadcast via the Council's website and can be found at:-

<https://rotherham.public-i.tv/core/portal/home>

If anyone present or members of the public in the public galleries do not wish to have their image captured they should make themselves known to Democratic Services before the start of the meeting.

This may require seating in a different area of the Chamber or in an alternative viewing room (if available).

Take time to familiarise yourself with the layout of the Chamber and the procedure.

YOUR RIGHT TO SPEAK

The 'right to speak' applies equally to the applicant and to the general public.

It is not intended that professional agents representing either the applicant or objectors, should be allowed to speak, but this is at the Chairman's discretion.

You will be invited to speak by the Chairman at the correct interval.

Switch the microphone on to allow everybody in the Chamber to hear your comments.

Each speaker will be allowed three minutes to state his/her case. The applicant does not have a "right to reply" to the objector(s) comments.

Only planning related comments can be taken into consideration during the decision process.

CONDUCT OF COMMITTEE MEETINGS

Speakers should not be allowed to engage in discussion with members of the Committee during public speaking or the Committee deliberations, to avoid any risk of accusation of bias or personal interest.

All attendees are reminded of the importance to remain calm, courteous and respectful during the meeting. Please refrain from shouting out and allow people to speak. Any person causing a disruption will be asked to leave the Council Chamber.

ROTHERHAM METROPOLITAN BOROUGH COUNCIL

PLANNING BOARD

MEMBERS' DECLARATION OF INTEREST

Your Name (Please PRINT):-

Meeting at which declaration made:-

Item/Application in which you have an interest:-

Date of Meeting:-

Time Meeting Started:-

Please tick (✓) which type of interest you have in the appropriate box below:-

1. Disclosable Pecuniary

☐

2. Personal

☐

Please give your reason(s) for you Declaring an Interest:-

(Please continue overleaf if necessary)

N.B. It is up to a Member to determine whether to make a Declaration. However, if you should require any assistance, please consult the Legal Adviser or Democratic Services Officer prior to the meeting.

Signed:-

(When you have completed this form, please hand it to the Democratic Services Officer.)

PLANNING BOARD
31st January, 2019

Present:- Councillor Sheppard (in the Chair); Councillors Andrews, Atkin, Bird, D. Cutts, M. Elliott, Fenwick-Green, Sansome, Steele, John Turner, Tweed, Walsh and Williams.

An apology for absence was received from Councillor Whysall.

The webcast of the Council Meeting can be viewed at:-
<https://rotherham.public-i.tv/core/portal/home>

72. DECLARATIONS OF INTEREST

The Chairman declared a Personal Interest in application No. RB2018/1900 (Change of Use to car valeting business (Use Class B1) at former Loan Shop, Hollybush Street/Rawmarsh Hill, Parkgate, for Mr. H. Mardan. The application was very close to Councillor Sheppard's home. He had not been influenced at all on the application and would be considering it as he would any other application.

73. MINUTES OF THE PREVIOUS MEETING HELD ON 10TH JANUARY 2019

Resolved:- That the minutes of the previous meeting of the Planning Regulatory Board held on Thursday, 10th January, 2019, be approved as a correct record.

74. DEFERMENTS/SITE VISITS

There were no site visits or deferments recommended.

75. DEVELOPMENT PROPOSALS

Resolved:- (1) That, on the development proposals now considered, the requisite notices be issued and be made available on the Council's website and that the time limits specified in Sections 91 and 92 of the Town and Country Planning Act 1990 apply.

In accordance with the right to speak procedure, the following person attended the meeting and spoke about the following application:-

- Change of Use to car valeting business (Use Class B1) at Former Loan Shop, Hollybush Street, Rawmarsh Hill, Parkgate, for Mr. H. Mardan (RB2018/1900)

Ms. D. Maloney (Applicant)

A letter of objection was received from Mr. R. Slater (Objector) which was read out at the meeting

(2) That application No. RB2018/1525 be granted for the reasons adopted by Members at the meeting and subject to the relevant conditions listed in the submitted report.

(3) That application No. RB2018/1900 be granted for the reasons adopted by Members at the meeting and subject to the relevant conditions listed in the submitted report together with the following additional condition:-

Prior to the business being brought into use, details of a 2m high close boarded fence which is to be erected between position A-B on the attached plan to prevent spray from the jet wash leaving the site shall have been submitted to and approved in writing by the Local Planning Authority. No jet washing shall take place until the approved fence has been erected on site and thereafter retained.

Reason:-

In the interests of the amenities of the locality and in accordance with the NPPF.

76. PROPOSED TREE PRESERVATION ORDER NO. 4, 2018 - 3 THE CROFTS, WICKERSLEY

This item was deferred until the next meeting of the Planning Board.

77. UPDATES

(a) Woodsetts Exploratory Site

It was reported that, as a result of an appeal having been submitted, a date was awaited for the Public Inquiry. Two Planning Board Members would be required to attend to support the Council's position.

Resolved:- That Councillors Sansome and Tweed represent the Planning Board at the Public Inquiry.

(b) Copies of the Councillors Companion for Design in Planning booklet were available for Members.

78. DATE OF NEXT MEETING

Resolved:- That the next meeting of the Planning Board take place on Thursday, 21st February, 2018, commencing at 9.00 a.m.

ROTHERHAM METROPOLITAN BOROUGH COUNCIL**PLANNING BOARD****DEFERMENTS**

- Planning applications which have been reported on the Planning Board Agenda should not be deferred on request without justification.
- Justification for deferring a decision can arise from a number of matters:-
 - (a) Members may require further information which has not previously been obtained.
 - (b) Members may require further discussions between the applicant and officers over a specific issue.
 - (c) Members may require a visit to the site.
 - (d) Members may delegate to the Assistant Director of the Service the detailed wording of a reason for refusal or a planning condition.
 - (e) Members may wish to ensure that an applicant or objector is not denied the opportunity to exercise the “Right to Speak”.
- Any requests for deferments from Members must be justified in Planning terms and approved by the Board. The reason for deferring must be clearly set out by the Proposing Member and be recorded in the minutes.
- The Assistant Director of Planning, Regeneration and Transport or the applicant may also request the deferment of an application, which must be justified in planning terms and approved by the Board.

SITE VISITS

- Requests for the Planning Board to visit a site come from a variety of sources:- the applicant, objectors, the Parish Council, local Ward Councillors, Board Members or sometimes from the Assistant Director of Planning, Regeneration and Transport.
- Site visits should only be considered necessary if the impact of the proposed development is difficult to assess from the application plans and supporting information provided with the officer's written report; if the application is particularly contentious or the application has an element that cannot be adequately expressed in writing by the applicant or objector. Site visits can cause delay and additional cost to a project or development and should only be used where fully justified.
- The reasons why a site visit is called should be specified by the Board and recorded.
- Normally the visit will be programmed by Democratic Services to precede the next Board meeting (i.e. within three weeks) to minimise any delay.
- The visit will normally comprise of the Members of the Planning Board and appropriate officers. Ward Members are notified of visits within their Ward.
- All applicants and representees are notified of the date and approximate time of the visit. As far as possible Members should keep to the schedule of visits set out by Committee Services on the Board meeting agenda.
- Normally the visit will be accessed by coach. Members and officers are required to observe the site directly when making the visit, although the item will be occasioned by a short presentation by officers as an introduction on the coach before alighting. Ward Members present will be invited on the coach for this introduction.
- On site the Chair and Vice-Chair will be made known to the applicant and representees and will lead the visit allowing questions, views and discussions. The applicant and representees are free to make points on the nature and impact of the development proposal as well as factual matters in relation to the site, however, the purpose of the visit is not to promote a full debate of all the issues involved with the application. Members must conduct the visit as a group in a manner which is open, impartial and equitable and should endeavour to ensure that they hear all points made by the applicant and representees.
- At the conclusion of the visit the Chair should explain the next steps. The applicant and representees should be informed that the decision on the application will normally be made later that day at the Board meeting subject to the normal procedure and that they will be welcome to attend and exercise their "Right to Speak" as appropriate.

**REPORT TO THE PLANNING REGULATORY BOARD
TO BE HELD ON THE 21 FEBRUARY 2019**

The following applications are submitted for your consideration. It is recommended that decisions under the Town and Country Planning Act 1990 be recorded as indicated.

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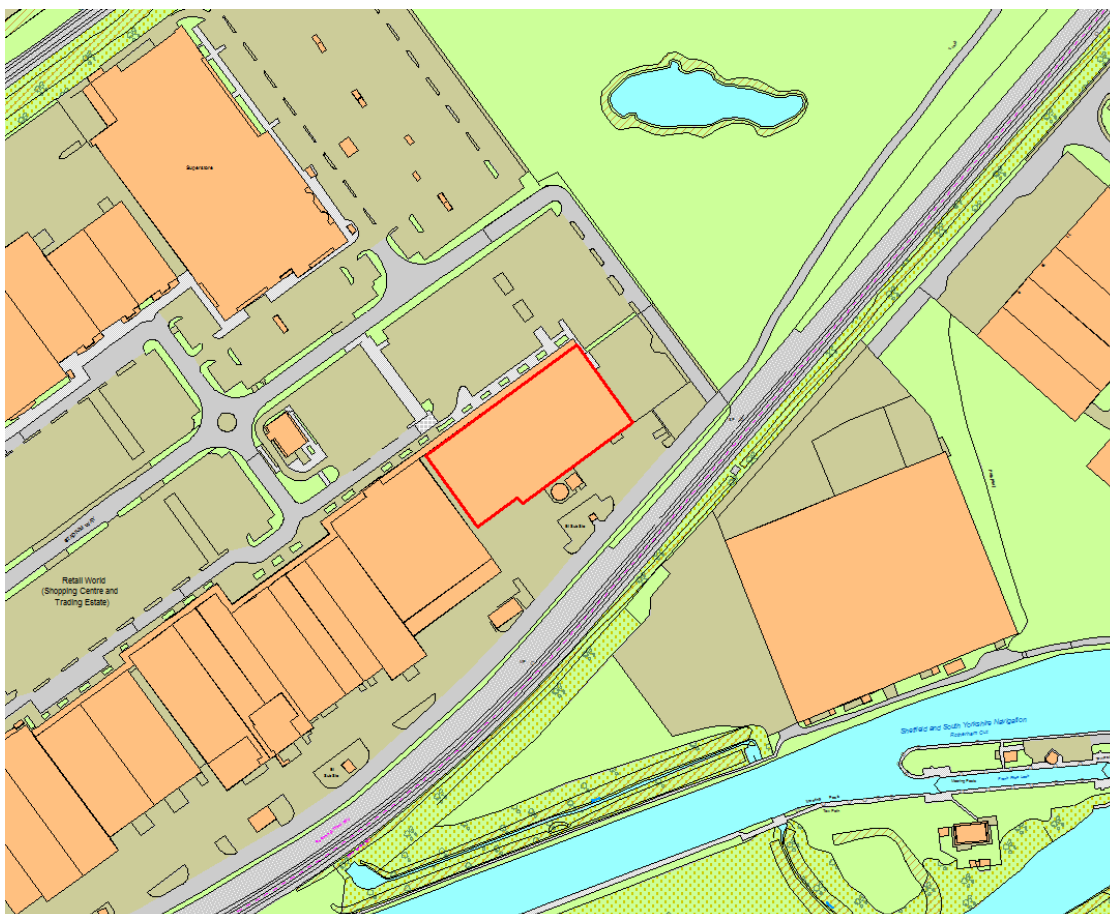
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**REPORT TO THE PLANNING REGULATORY BOARD
TO BE HELD ON THE 21 FEBRUARY 2019**

The following applications are submitted for your consideration. It is recommended that decisions under the Town and Country Planning Act 1990 be recorded as indicated.

Application Number	RB2018/1118
Proposal and Location	Installation of mezzanine floorspace, Unit 41, Stadium Way, Parkgate.
Recommendation	Grant subject to conditions

This application is being presented to Planning Board as the proposal is a major development and does not fall within the scheme of delegation.



Site Description & Location

The site comprises of Unit 41 which lies in the southern half of the Retail World shopping complex off Stadium Way to the south of Parkgate.

Background

The most relevant site history can be summarised as follows:

RB1999/0737 which granted permission on 4 December 2000 (the 2000 permission) for the “Erection of 3 retail units and formation of car parking area”.

Condition 5 of this permission states 'None of the retail units, hereby approved, shall be sub-divided into units of less than 929 sqm. or altered so as to create additional floorspace within the unit unless otherwise agreed in writing with the Local Planning Authority'.

It should be noted that since 2006 the installation of a mezzanine floor for retail purposes with a floor area in excess of 200 sqm. requires planning permission.

Proposal

This is a full planning application which seeks permission to allow for a first floor mezzanine floor of 3680sqm within the existing building to be used for open A1 retail purposes. No changes to the external appearance of the unit are proposed and the existing external footprint of the building will remain unchanged.

To support the application a Planning Statement including a sequential test, a Transport Assessment and Travel Plan have also been submitted. These will be considered in more detail below.

Development Plan Allocation and Policy

The Core Strategy was adopted by the Council on the 10th September 2014 and forms part of Rotherham's Local Plan together with the Sites and Policies Document which was adopted on 25 June 2018.

The site has an out of centre retail park allocation in the Local Plan, although this is not classed as a town centre. The southern section of the site lies within a known surface water flood risk area.

For the purposes of determining this application the following policies are considered to be of relevance:

Core Strategy policy(s):

CS12 Managing Change in Rotherham's Retail and Service Centres

Sites and Policies Document:

SP23 Out-of-Centre Retail Parks and Other Out-of-Centre Developments

Other Material Considerations

National Planning Practice Guidance (NPPG) - On 6 March 2014 the Department for Communities and Local Government (DCLG) launched this planning practice guidance web-based resource. This was accompanied by a Written Ministerial Statement which includes a list of the previous planning practice guidance documents cancelled when this site was launched.

National Planning Policy Framework: The revised NPPF came into effect on July 24th 2018. It states that "Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise."

The Local Plan policies referred to above are consistent with the NPPF and have been given due weight in the determination of this application.

Publicity

The application has been advertised by way of site notice (19 July 2018) and letters to neighbouring units (19 July 2018). No representations have been received.

Consultations

Streetpride (Transportation Infrastructure Service) – no objections subject to conditions

Planning Policy – no objections to revised sequential test

Neighbourhoods (Environmental Health) – no objections

Streetpride (Drainage) – no objections

Appraisal

Where an application is made to a local planning authority for planning permission.....In dealing with such an application the authority shall have regard to -

- (a) the provisions of the development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations. - S. 70 (2) TCPA '90.

If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise - S.38 (6) PCPA 2004.

The main considerations in the determination of the application are:

- Principle and policy considerations
- Highway Safety
- Other issues

Principle and policy considerations

At 3,680sqm the proposal represents a significant increase in the retail floorspace in this location. The site is within an existing retail park which is not a defined town, district or local centre and as such is in an out of centre location.

Both the NPPF and Local Plan Policy CS12 requires that the proposed development would need to satisfy the sequential approach and, as the floorspace is above 500sqm, an impact assessment is also required.

Policy SP23 clarifies that planning permission for the expansion of existing out-of-centre facilities or new out-of-centre retail development will not be supported unless the proposal satisfies the requirements of Core Strategy Policy CS12.

When the application was initially submitted it was not supported by a sequential test in support of the application. At officers' request, the applicant subsequently submitted a sequential test which indicates that the sequential analysis has not identified any sequentially preferable locations. The impact assessment confirms that the impact on Rotherham Town Centre and Parkgate District Centre will be limited and there will be no material impact on any other location.

The sequential test refers to assessment of sites at Rotherham Town Centre and Parkgate District Centre, however no information is provided in appendix 2 regarding Parkgate. However, the applicant has confirmed that this is because there are no vacant units of an appropriate size to accommodate the space required. The Council's Planning Policy Team have subsequently confirmed that the sequential and impact test policy requirements have been satisfied.

However, it is considered that a condition to restrict any future subdivision of the unit at a later date should be imposed. This would prevent the creation of smaller units which might compete with and be detrimental to Parkgate and Rotherham centres. This would tie in with the sequential test which was looking at alternative sites to meet the quantum of the proposed scheme and not something that could be disaggregated.

Highway Safety

The Transportation Unit indicate that the Transport Assessment has considered the likely traffic impact of various scenarios at the Stadium Way/A633 Roundabout in the design year 2023 i.e. the baseline traffic, with mezzanine development containing class A1 retail and D2 leisure and with mezzanine development containing class A1 retail.

The modelling results confirm that the development will not have a significantly detrimental impact on the operation of the roads in the vicinity of the site.

A car parking accumulation study for the whole retail site has been carried out in previous TA's for other developments on the retail park. Given the low potential impact of the development on parking demand (<4%) this falls within the excess capacity demonstrated previously. Cycle parking is to be provided.

The site has good footway provision linking with the local area and pedestrian crossing facilities on the A633. Public transport is good as the site borders the A633 corridor with bus services every few minutes. The tram-train terminus at the site enhances accessibility and encourages interchange with local rail facilities.

Overall it is considered that the development will have a minimal impact on the total traffic generated by the retail park and no material adverse road safety impact is expected. In these circumstances, the proposal can be supported in highway/transportation terms subject to conditions including a Travel Plan as well as cycle parking.

Other issues

As indicated above there are no changes to the external appearance of the unit and it is not considered to have any impact on the surroundings in terms of visual amenity, noise or drainage. The Council's Environmental Health and Drainage team have raised no objections.

Conclusion

Following the submission of an acceptable sequential test and retail impact statement, the principle of the proposal for a mezzanine floor is considered acceptable. There are no highway safety concerns and the proposal does not have any visual changes on the external appearance of the building. The proposal is recommended for approval subject to conditions.

Conditions

01

The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.

Reason

In order to comply with the requirements of the Town and Country Planning Act 1990.

02

The permission hereby granted shall relate to the area shown outlined in red on the approved site plan and the development shall only take place in accordance with the submitted details and specifications as shown on the approved plans (as set out below) (Drawing numbers site plan/block plan A0-01 Rev A, A01-02 Rev B, A01-03 Rev A, retail statement)(received 27.09.18, 28.11.18).

Reason

To define the permission and for the avoidance of doubt.

03

The mezzanine floor hereby approved to Unit 41 shall not be sub-divided or operated as a separate unit at any point in the future without the prior written consent of the Local Planning Authority.

Reason

The sequential test has been assessed on the basis of alternative sites rather than smaller units in order to safeguard the vitality and viability on the town centre in line with the general guidance within the NPPF.

04

Before the proposed development is brought into use, a final Travel Plan shall have been submitted to and approved by the Local Planning Authority. The plan shall include clear and unambiguous objectives, modal split targets together with a programme of implementation, monitoring, validation and regular review and improvement. The Local Planning Authority shall be informed of and give prior approval in writing to any subsequent improvements or modifications to the Travel Plan following submission of progress performance reports as time tabled in the monitoring programme. For further information please contact the Transportation Unit (01709) 822186.

Reason

In order to promote sustainable transport choices.

05

Prior to the development being brought into use, details of secure cycle parking within the vicinity of the entrance to the building shall be submitted to and approved by the Local Planning Authority and the approved facilities shall be provided throughout the life of the development.

Reason

In order to promote sustainable transport choices.

Informatives

01

The granting of this planning permission does not authorise any signage to be erected related to the development. Such signage is controlled by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 and a separate application for advertisement consent may be required

POSITIVE AND PROACTIVE STATEMENT

During the determination of the application, the Local Planning Authority worked with the applicant to consider what amendments were necessary to make the scheme acceptable. The applicant agreed to amend the scheme so that it was in accordance with the principles of the National Planning Policy Framework.

To the Chairman and Members of the
PLANNING REGULATORY BOARD

Date 21 February 2019

Report of the Director of Planning and Regeneration Service

ITEM NO. SUBJECT

1 Page No. 14	Proposed Tree Preservation Order No 4, 2018 – 3 The Crofts Wickersley Rotherham S66 1NQ
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2 Page No. 23	Proposed Tree Preservation Order No 3, 2018 – Land at Osborne House, 3 South Terrace, Moorgate Street, Rotherham, S60 2EU
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ROTHERHAM METROPOLITAN BOROUGH COUNCIL PLANNING REGULATORY BOARD

PLANNING AND REGENERATION SERVICE

REPORT TO COMMITTEE
21 FEBRUARY 2019

Item 1

Proposed Tree Preservation Order No 4, 2018 – 3 The Crofts Wickersley Rotherham S66 1NQ

RECOMMENDATION:

That Members confirm the serving of Tree Preservation Order No. 4, 2018 without modification with regard to the Sycamore tree which is the subject of this report, situated on land at 3 The Crofts, Wickersley under Section 198 and 201 of the Town and Country Planning Act 1990.



Background

This Sycamore tree was originally protected by Tree Preservation Order No.7, 1977.

An application (reference RB2013/0936) to fell this Sycamore tree was submitted by the owner of the property at 3 The Crofts due concerns over its safety, though the application was refused on 9 September 2013 as it was not considered at that time that there was insufficient justification to fell the tree.

A separate application to fell a tree at a different address but also covered by TPO No.7, 1977 was also refused and an appeal submitted. At this time it was discovered that the original confirmation of the TPO could not be located and the appeal was cancelled, thus allowing that tree to be felled.

Based on this a further application to fell the Sycamore tree at 3 The Crofts was submitted, this time by a neighbouring resident who had concerns about the safety of the tree (RB2018/1386). This application was also refused, once again as it was not considered that sufficient information had been submitted to justify the felling of the tree. An appeal against this refusal is still outstanding. Due to the uncertainty of the validity of the original TPO from 1977 the tree consultant employed by the Council at that time assessed the tree and found that it was still worthy of protection by a Tree Preservation Order.

A Tree Preservation Order was placed on the Sycamore tree under a new TPO (ref: No. 4 2018) on 31 October 2018 and all interested parties notified. The purpose of this report is to assess the objections received and determine whether the TPO should be confirmed or not.

The government's advice in the National Planning Practice Guidance (NPPG) states that,

"When deciding whether an Order is appropriate, authorities are advised to take into consideration,

- *what 'amenity' means in practice*
- *what to take into account when assessing amenity value*
- *what 'expedient' means in practice*
- *what trees can be protected and*
- *how they can be identified*

When granting planning permission authorities have a duty to ensure, whenever appropriate, that planning conditions are used to provide for tree preservation and planting. Orders should be made in respect of trees where it appears necessary in connection with the grant of permission".

Objections

Objections were subsequently received from the applicant and nearby neighbours.

Objections raised are on the following grounds –

- The applicant has raised concerns with regard to the process of evaluating the tree and the serving of the new Tree Preservation Order
- There has already been a precedent set by the tree in Pinchfield Holt which was felled when the confirmation order couldn't be found.
- There is strong support from all the residents for felling the tree
- The owner of the tree feels morally responsible for the safety of neighbours but is helpless given the Council's current position
- The tree is not native to the UK and as such has no local importance and cannot be seen from public roads.
- Disagree with the TEMPO rating of the tree due to the current defects
- The tree is far too large for the garden, and this residential setting, the branches overhang the driveway very close to the house
- The tree is unbalanced, unsightly and leans towards the house and could lead to the eventual toppling over of the tree and distance should be calculated.
- The roots are exposed on the opposite side of the lean these are in a small raised bed surrounded by a dry stone wall which has been rebuilt twice in the last ten years. This is a totally inappropriate location for this tree to be in this small raised bed.
- Never witnessed any birds or wildlife nesting in the tree or using it as a haven, other trees in the area that may have been used for roosting bats have been felled.
- Strong winds bend the tree towards No. 1 the Crofts and the new houses to the rear and leads to fallen branches.
- Numerous requests to fell the tree have been denied with residents having expressed concerns regarding structural damage and loss of life if the tree collapsed
- The tree surveyor also noted that the tree had poor form
- The root spread especially during dry weather I also a concern with noticeable subsidence in the farm house.
- The tree casts shade onto the adjacent garden, undermining the growth of surrounding plants and trees and creating further problems regarding seedlings, leaves and sap.
- The tree has 'tar spot' which weakens the tree and also 'Sooty Bark disease which is a fungus infection with numerous cracks in the tree, green mould and fungus.
- The tree also has canker that eroded into the tree on the opposite side of the lean causing further weakness.
- Surrounding neighbours are very anxious about the safety of the tree. Four year ago another tree fell on house 100 yds away no-one has acknowledged the residents safety concerns.
- Why is RMBC protecting a tree in a residential area away from the public eye but allowing buildings on green belt land
- Would be happy to contribute towards the planting of a new tree to replace this one.
- A tree with a TPO in Pinchfield Holt was felled earlier this year because the confirmation couldn't be found, the identical situation applies to this tree but we have been treated very differently.

- The tree was more than likely put under a TPO as it shielded the property from a small industrial site around the time the property was built, in that respect the TPO has served its purpose as the small industrial site is no longer there. The replacement with housing now some 41 years along from the original TPO, means that the safety and welfare of the occupants of the housing should be viewed along with the issues pointed out in this objection.
- RMBC should not have allowed housing in such close proximity to this tree, given it's ability to grow to above 70m

Two Right to Speak requests have been received.

Comments from Tree Service Manager

The Tree Service Manager has considered the objections raised and has commented as follows:

"To confirm I inspected the tree on 17 January 2019. Unfortunately Mr and Mrs Hemmingway were not at home at the time. My inspection did not find anything that has led me to question the findings of the previous inspection by the Council's Arboricultural consultant.

Wickersley is a peri-urban town and the local streets around The Crofts are distinguished by the presence of large mature trees in gardens. Their presence helps to provide an arboreal feel to the area and provide a link to the neighbouring countryside.

Tree is too large for garden

Whilst the tree is becoming a tall tree, it stands in the very north east corner of the rear garden of 3 The Crofts, with approximately 60% of the canopy (as a result of pruning on the household side) over the neighbouring driveway. The remainder of the canopy spreads approximately 7 metres into the garden; however approximately 14 metres along the eastern boundary is not covered by the trees canopy. Indeed the tree only covers about 38m² of the garden, whilst approximately 190m² remains uncovered by the tree's canopy.

As the tree is stood in the northern extremity of the garden it will cast very little shade on the garden of 3 The Crofts; usually only during the height of summer during the first few hours of the morning. This is therefore not considered extreme.

There are no legal limits to the heights of trees; therefore discussion of whether a tree is too big comes down to personal preference rather than a basis in law. The tree's height helps to contribute to the amenity that it provides the area.

Tree overhangs driveway and close to house

There is no legal requirement to stop branches from crossing boundary lines. The tree's canopy has been managed so as to provide clearance of the neighbouring driveway and as such it does not restrict access.

As shown in photograph 15 of the objection by Ms Andrews of 7 Welbeck Mews, the tree is currently well clear of the neighbouring dwellings' roof lines in Welbeck Mews. If the tree's branches were to grow to such an extent that it would be foreseeable that they could come into contact with the houses then, if an application was submitted, permission would be provided to maintain clearance between the tree and the house.

This is common place with protected trees and depending on the situation permission to maintain clearance of distances between 1.5 and 3 metres are regularly given.

The tree's roots are exposed

An inspection by the tree consultant James Royston showed that he was unable to identify any roots showing above ground level. Nor was any comment provided to describe any signs of instability around the base of the tree.

Tree is not used by birds or wild animals

There is currently no bird or animal nest visible in the tree; however this does not mean that the tree is not used on a transitory basis by birds, bats or insects. Bats in particular will often use cracks in tree bark as a temporary shelter.

The objections provided also paint a different picture of the tree, with one stating that the tree does not even attract aphids, whilst a second details quite strongly that aphids are present and creating honeydew drip into their garden. Where aphids are there will be other insects who feed off them.

Strong winds have caused the branches to bend and some to fall from the tree

Trees have evolved to respond to the pressures placed on them by wind. As a result trees use their branches to dissipate the wind pressures through the shaking of the smaller branches, to create a mass damping effect on the wind energy. Without the movement of the branches then trees would not be able to withstand wind pressure to the level they do. It is appreciated that the bending of branches in strong winds can feel disconcerting but this is a natural reaction for the tree.

As trees are reactive organisms, they grow according to the environmental pressures placed on them. Therefore the movement caused by wind also encourages the tree to lay down stronger wood, to ensure that it is even more resistant to future wind pressures.

The assessment of the tree's canopy did not show any wounds of a significant size that would indicate the loss of medium to large branches from snapping out.

As with all living organisms there is a risk level associated with trees that can never be removed. Even healthy, structurally sound trees, if they are caught

by a gust of wind at the wrong time will lose a branch. However injury/death or damage as a result of falling branches or trees is such a rarity that we must weigh up the enormous benefits trees provide to their environment when making decisions to remove healthy, structurally sound trees.

Concerns over damage should the tree fall

As with all mature trees adjacent infrastructure, should the tree fall, then it can't be denied that damage will be incurred; however healthy trees do not normally fall over.

To date no evidence has been provided by the applicant to show that the Sycamore is either unhealthy or is suffering from a significant structural problem that is undermining its integrity. Rotherham Metropolitan Borough Council has however inspected the tree using a professionally trained arboricultural professional and found that there is no significant defect in the tree that it can foresee will lead to the tree's collapse.

Tree Surveyor noted the tree has poor form

The Tree Consultant did not state that the tree has poor form. In the tree consultant's TEMPO assessment of the tree he described the tree:

"Outwardly appears in good condition with reasonably good future prospects."

This resulted in a score of 5 out of 5 in section 1 a) of the form, which details a trees condition.

The tree consultant then went on to assign the tree a life expectancy of between 40-100 years. To foresee beyond this timescale, given the tree's semi urban location and that trees can usually be expected to live a shorter life in an urban environment, is the maximum that the consultant could realistically give and is therefore in no way a slight on the tree's health or structural condition.

Subsidence damage to neighbouring house

To date no evidence has been provided to prove that the tree has caused damage to one of the neighbouring houses/buildings. If evidence was provided then further consideration would be given to the tree's removal.

The level of information required to show that a tree is a cause of subsidence related damage is detailed on section 8 of the TPO application form.

Shade on neighbouring gardens undermining plant growth

There is no legal right to light in relation to vegetative growth; therefore it is recommended that any plants chosen for gardens affected by shade are species capable of tolerating shade.

The tree though has now been crown lifted quite high so that sun light would now be able to pass underneath the tree's canopy, if it was not for the evergreen shrubs that have been planted along the fence line of 3 The Crofts – see photograph 15 of Ms Andrew's objection.

Falling Leaves, seeds and sap

Falling leaves, seeds and sap under the current British legal system are not recognised as a nuisance and therefore not a reason to remove a tree. They are all considered natural processes and their removal (picking up leaves, removing seedlings, etc) is seen as normal maintenance of a person's property.

The tree has tar spots (*Rhytisma acerinum*) on its leaves, *Ceratocystis platani*, green mould and fungus and sooty bark disease (*Cryptostroma corticale*)

Tar spots – The fungal infection that causes tar spots on Sycamore leaves have very little effect on the tree's health. Infection can lead to some leaves falling early in the year but this is still usually a small number and late enough in the growing season that it has little to no effect on the tree's health.

Ceratocystis platani – This disease is limited to trees only in the genus *Platanus*. Sycamore is in the genus *Acer*, therefore the tree could not succumb to the disease *Ceratocystis platani*.

Sooty bark disease – No evidence has been provided to show that sooty bark disease is present on the tree and it has not been spotted by the arboricultural consultant who inspected the tree.

Green mould and fungus – No evidence of tree decay moulds or fungi has been presented or identified by the arboricultural consultant. The supplied photographs of the tree by the objectors to the TPO do show that the tree is colonised by a range of lichen. Whilst lichen is a form of fungus, it is not detrimental to a tree's health and is usually regarded as a sign of clean air.

Tree has cracks in it.

Where some trees will produce smooth bark, such as beech trees or ridged bark, such as oak or ash, sycamore trees produce a plated bark. This can create an appearance of cracks in the branches and trunk of the tree, particularly at branch forks where folding of the bark can give an even more pronounced look to 'cracks.'

No arboricultural evidence has been provided to show that cracks have been identified, investigated and shown to be significantly affecting the tree's structural integrity.

As already stated the tree's condition was rated as 5 out of 5 on its TEMPO analysis.

Tree's trunk has canker, weakening the tree.

The area of the tree identified as having canker was inspected by the arboricultural consultant who saw no reason why this would affect the tree's structural integrity.

Another tree fell nearby; this one may do the same.

It is impossible to comment on the reason why another tree may have fallen without being able to carry out a full inspection of the tree, however just because one tree fell over does not mean that will be the fate of this Sycamore.

As has already been stated, no evidence has been presented or found during inspection by an arboricultural professional that suggests this tree is in poor health or is suffering from significant structural failings.

RMBC protecting a tree in a residential area away from the public eye but allowing buildings on green belt land

Each planning application is assessed on an individual level against planning law and policies, with appropriate actions taken to meet the requirements of said law and policies.

Decisions to grant planning permissions on other sites have no bearing on the reduction in amenity that will be felt by the removal of a protected tree on another site.

The TPO application and subsequent appeal that led to the creation of this TPO was based on the fact that the tree's removal will lead to a loss of amenity to the local area.

A tree with a TPO in Pinchfield Holt was felled earlier this year because the confirmation couldn't be found, the identical situation applies to this tree but we have been treated very differently

This is not relevant to the consideration of the confirmation or not of the TPO relating to the Sycamore at 3 The Crofts.

Would be happy to contribute towards the planting of a new tree to replace this one.

Whether a new tree can or cannot be planted in place of the existing tree is not relevant when considering whether to protect the tree in the first place. It would only be relevant if and when an application was submitted to fell the tree in question, which is not the issue in respect of this report.

There was an appeal in process so the TPO should not have been served.

There is nothing in the TPO legislation to stop a new TPO being created whilst an appeal to the Planning Inspectorate is in process.

The purpose of taking an appeal to the Planning Inspectorate is for them to make a judgement on trees protected by a TPO. A tree presented to the Planning Inspectorate without TPO documentation though will be judged by the Planning Inspectorate as not being protected and are likely to pass little judgement on the tree's amenity and worthiness for retention. The new TPO was served, therefore, as a precautionary approach in case the appeal was dismissed due to the lack of evidence that the original TPO had been confirmed.

The appeal, ultimately, is about the refusal to allow the tree's removal and not the absence of the original TPO documentation. Therefore by assessing the tree's health and amenity and showing it to be appropriate for inclusion in a TPO, the Council merely demonstrated to the Planning Inspectorate that the tree is still protected and that in the eyes of Rotherham Metropolitan Borough Council the tree is worthy of protection.

The making of the TPO would therefore not have any bearing on the Planning Inspectorate's decision process and whether they deem the tree to be worthy of protection.

Concerns over the tree's lean

It is not unusual for trees to grow with a lean. They often occur as a result from competition with other trees or structures at an early age. Leans only become a problem where they are progressing. Progressive leans can be identified by the lifting of the root plate or signs on the trunk's bark. Neither of these is present and no evidence has been provided to show that the lean is significantly worse.

There is no certificate of confirmation for the tree on the original TPO. This was the basis of us believing that the tree could be felled.

The old TPO no longer applies to this TPO or this objection process. The tree has been re-assessed and found to provide a good level of amenity and therefore worthy of protection.

The advice to submit an application to fell under the old TPO was intended to protect the owner from potential future prosecution should the original TPO documentation be found.

As an application to fell a protected tree requires proof of why the tree should be felled the application should have been supported with the necessary evidence. No evidence was provided and the tree was found to be healthy and structurally safe. The Application was therefore refused.

The Sycamore is not a native species

There is no requirement for a tree protected by a TPO to be a 'native' species.

Conclusion

It is considered that the objections to the Order have been carefully considered and that the Order has been made in accordance with Government guidelines. In this instance, it is recommended that the Order is confirmed without modification.

Item 2

Proposed Tree Preservation Order No 3, 2018 – Land at Osborne House, 3 South Terrace, Moorgate Street, Rotherham, S60 2EU

RECOMMENDATION:

That Members confirm the serving of Tree Preservation Order No. 3, 2018 without modification with regard to the Sycamore tree and 5 London Plane trees which are the subject of this report, situated on land at Osborne House, 3 South Terrace, Moorgate Street, Rotherham under Section 198 and 201 of the Town and Country Planning Act 1990.



Background

The Sycamore tree and 1 of the London Plane trees are protected by the Rotherham Town Centre Conservation Area.

An application (reference RB2018/1288) to fell the Sycamore tree and London Plane (as well as the other 4 London Plane trees that stand outside of the Conservation Area) was submitted by Mr Stephen Ball of Precision Dental and Facial Aesthetics Ltd, Osborne House with no details provided as to the reasons for the work.

Based on the tree's health, maturity and the loss of amenity to the conservation area it was felt that all 6 trees should be protected by a Tree Preservation Order.

A Tree Preservation Order was placed on the trees under a new TPO (ref: No. 3, 2018) on 27 September 2018 and all interested parties notified. The purpose of this report is to assess the objections received and determine whether the TPO should be confirmed or not.

The government's advice in the National Planning Practice Guidance (NPPG) states that,

“When deciding whether an Order is appropriate, authorities are advised to take into consideration,

- *what ‘amenity’ means in practice*
- *what to take into account when assessing amenity value*
- *what ‘expedient’ means in practice*
- *what trees can be protected and*
- *how they can be identified*

When granting planning permission authorities have a duty to ensure, whenever appropriate, that planning conditions are used to provide for tree preservation and planting. Orders should be made in respect of trees where it appears necessary in connection with the grant of permission”.

Objections

Objections were subsequently received from the applicant and nearby neighbours.

Objections raised are on the following grounds –

- The trees provide little amenity.
- The trees block out light to buildings.
- The falling leaves are considered a nuisance.
- The trees restrict landscaping plans.
- The trees are implicated in damage to a neighbouring wall.
- The trees prevent the use of solar panels.
- The TPO will discourage the planting of further trees.
- One tree is leaning towards a building.
- The trees hide suspicious activity.

Four Right to Speak requests have been received.

Comments from Tree Service Manager

The Tree Service Manager has considered the objections raised and has commented as follows:

The trees provide little amenity

Rotherham Metropolitan Borough Council uses the tree appraisal method TEMPO to assess the validity of placing a tree under the protection of a tree preservation order. TEMPO is a tree industry approved method for placing a numerical value to the amenity provided by a tree.

In a TEMPO analysis a tree that scores 12 and above is considered worthy of inclusion in a TPO. The tree consultant who carried out the original inspection of the trees gave each tree a TEMPO score of 18. A subsequent inspection by the Tree Service Manager scored the trees between 16 and 18, depending upon their public visibility.

As part of his inspection the Tree Service Manager also carried out a CAVAT (Capital Asset Valuation of Amenity Trees) valuation to further assess their suitability for retention. CAVAT places a monetary value on the amenity provided by a tree.

The combined amenity valuation of the six trees is £142910.

Both systems allow for trees to have limited to no views from a public location and still gain a high amenity score.

The trees along the western boundary are clearly visible from Grove Road, whilst the remaining trees are visible from the many overlooking properties that surround them (TPO appeal reports have shown that trees in rear gardens are worthy of protection if overlooked by a sufficient number of private properties).

Beyond the visual aspect of the trees, the amenity value of trees is derived from the wider benefits delivered by trees; many of which are only truly felt once a tree reaches maturity.

Just some of the benefits of mature urban trees, such as those at Osborne House, that do not require a line of sight from a public highway are:

- Cooling local air temperatures,
- Intercepting rainfall
- Reducing air and water pollution
- Provision of habitat
- Associations with improved mental and physical health
- Associations with increased property values

All trees have therefore been shown to have high amenity and are important to the local area and their loss will be felt.

The trees block out light to buildings.

There is no legal right to light in relation to light blocked by vegetation.

The falling leaves are considered a nuisance.

Under the current UK legal system falling leaves, twigs, seeds, fruit, honeydew drip, etc. are not seen as a legal nuisance but rather a part of the natural lifecycle of a tree.

The removal of such tree debris would be considered as normal maintenance for a property owner.

The trees restrict landscaping plans.

The trees are not a barrier to carrying out landscaping, however given the trees' size and likely root spread there will need to be additional consideration given as to how any landscaping is implemented.

There are many solutions available for both soft and hard landscaping that make the retention of large mature trees perfectly possible and reasonable.

The trees are implicated in damage to a neighbouring wall.

A section of the boundary wall between the car park of South Terrace and the block of flats Brooksmoor House has come down.

- The wall is a very old wall, possibly 100 years old going by the weathering of the stone.
- Two of the mature London Plane trees do stand very close to this section of wall.
- There are no visible signs of significant, large roots adjacent the fallen section that might indicate the tree was pushing in the wall.
- No evidence has been provided to suggest the wall can't be re-built with the trees in situ.

Garden walls do deform and crack over time even where trees are not present, particularly on clay soil whose volume changes with the seasons. It is entirely possible therefore that the wall could be being influenced by the volumetric changes of the clay soil rather than pressure from the tree. This would happen irrespective of the trees presence.

If evidence was provided to show that the wall could not be re-built with the trees retained then further consideration would be given to the removal of the 2 London Plane trees along with appropriate replacement planting.

The trees prevent the use of solar panels.

There is no legal requirement to prevent or negate the shading of solar arrays by trees and this is not a legal 'nuisance' as defined in law.

The planned installation or presence of an existing array on either a homeowner or third party property presents no justification for the excessive

reduction or removal of a protected tree and consent for such would not be granted by the Local Planning Authority.

The TPO will discourage the planting of further trees.

The planting of further trees, whilst largely encouraged, is a decision for the land-owner and does not relate to the relevance of the making of this TPO.

One tree is leaning towards a building.

The London Plane tree adjacent the Hope Church building has grown with a lean. There is no evidence that the lean is progressive or that the tree is structurally unsafe.

Many trees grow with leans, which are usually caused at a young age, either as a result of poor planting or as a result of competing against neighbouring trees. As trees are reactive organisms they grow according to the pressures placed on them. Trees with leans will lay down additional growth to compensate for the lean.

The trees hide suspicious activity.

The trees are large, mature trees that have been crown lifted to a good height. They do not block security lighting and their branches do not block sight lines.

There a number of shrubs and bushes around the base of some of the Plane trees that could be removed to improve visibility. Replacement with thorny species such Pyracantha may help to dissuade suspicious activity.

Conclusion

It is considered that the objections to the Order have been carefully considered and that the Order has been made in accordance with Government guidelines. In this instance, it is recommended that the Order is confirmed without modification.