

To the Chairman and Members of the
PLANNING REGULATORY BOARD

Date 21 February 2019

Report of the Director of Planning and Regeneration Service

<u>ITEM NO.</u>	<u>SUBJECT</u>
1 Page No. 14	Proposed Tree Preservation Order No 4, 2018 – 3 The Crofts Wickersley Rotherham S66 1NQ
2 Page No. 23	Proposed Tree Preservation Order No 3, 2018 – Land at Osborne House, 3 South Terrace, Moorgate Street, Rotherham, S60 2EU

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 is 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.