

To the Chairman and Members of the  
PLANNING REGULATORY BOARD

Date 14 March 2019

Report of the Director of Planning and Regeneration Service

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**Item 1**

**Proposed Tree Preservation Order No 9, 2018 – land at Doctor Lane, The Hop Inge and Serlby Lane, Harthill**

**RECOMMENDATION:**

**That Members confirm the serving of Tree Preservation Order No. 9, 2018 without modification with regard to the 10 trees which are the subject of this report, situated on land at Doctor Lane, The Hop Inge and Serlby Lane Harthill under Section 198 and 201 of the Town and Country Planning Act 1990.**

**Background**

The Council received an application is to fell 1No. Sycamore Tree protected by RMBC Tree Preservation Order (No.2) 1971 at No.8 Doctor Lane on 23/07/18 (RB2018/1145). The reasons given to carry out the work were as follows:

- Too large for residential plot – has outgrown its position.
- Too close to properties – posing risk to persons and property from falling limbs.
- Has low amenity value.
- Tree is less than 10m from property.

The application to fell the tree was subsequently refused on 06/09/18 for the following reasons:

01

*The Council considers that insufficient justification has been submitted to warrant the removal of the protected tree. No evidence has been provided to show the tree is causing irreparable damage to neighbouring properties and in the absence of such evidence the removal of this protected tree would be contrary to the requirements detailed at Policies CS21 'Landscapes' and SP36 'Conserving the Natural Environment' of the Rotherham Local Plan.*

The applicant then applied to appeal the refusal of consent to the Secretary of State on 24/10/18. Due to the age of the original TPO dating back to 1971 the Council could not locate the original legal documents and as such it was therefore necessary to serve a new TPO in order to protect the tree to the rear of No.8 Doctor Lane, as well as other trees protected under the 1971 TPO.

Furthermore the new TPO allowed the Council to reassess the trees in the area and to ensure that only those of good quality are protected. The current appeal is still undetermined and awaiting the outcome of the new potential confirmation.

The Council's Tree Service Manager has recommended 10 trees in the area are protected as part of a new TPO, including the tree to the rear of No.8 Doctor Lane. The following trees are recommended for inclusion within a new Tree Preservation Order:

Reference on Map	Description	Situation
T1	Sycamore	Rear garden 8 Doctor Lane
T2	Pine	Rear garden of 5 The Hop Inge
T3	Pine	Rear garden of 5 The Hop Inge
T4	Cherry	Front garden of 20 Doctor Lane
T5	Ash	Front garden of 22 Doctor Lane
T6	Birch	Front garden of 62 Serlby Lane
T7	Birch	Rear garden of 62 Serlby Lane
T8	Sycamore	Rear garden of 62 Serlby Lane
T9	Birch	Rear garden of 62 Serlby Lane
T10	Birch	Rear garden of 62 Serlby Lane

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”.*

## **Representations**

One letter in support has been received from a resident on The Hop Inge.

An objection has also been received from the occupiers of 8 Doctor Lane raising the following concerns:

- The tree is situated in the rear garden of a private residence and has in my opinion already outgrown its position – now being too close to both

my property and that of my neighbour (No 6 Doctor Lane). The property I now own was built in 1975. The original TPO was made in 1971 when the council owned the land and later sold the land for domestic dwellings to be sited on. Therefore the council would have known the order existed, and I feel there was a lack of insight as to the size the tree would grow to, and therefore have some impact on the dwellings in years to come.

- Due to the size the tree has been allowed to grow to by the previous residents – I believe it now poses a serious risk of harm / damage both to property and persons should it fall or loose large limbs during storm conditions, and I respectfully request that this point is given serious consideration by yourselves. We have noticed small limbs fall from the tree in strong winds.
- The tree has no cultural or historic value.
- The tree does not bring any reasonable degree of public benefit.
- The tree has little or no amenity value to the area. It produces no decorative foliage / flowers / berries or autumn colour – unfortunately it does produce sticky sap which cause both ourselves and neighbours many issues – as the sap sticks to windows and vehicle paintwork.
- Removing the Sycamore tree would not have any detrimental effect on the immediate area or residents – as the village of Harthill has several areas of woodlands / conservation area that the local residents are able to enjoy, that also provide plentiful habitats for wildlife. I therefore do not feel that the loss of 1 Sycamore tree from a private garden would have any significant impact on the local environment.
- Due to the size of the tree it also sheds a huge volume of leaves in the autumn – again causing neighbours much annoyance at having to clear them away from their property – especially as the council now charge for removal of garden waste.
- There is visible evidence that the tree roots are lifting the patio paving around it, giving rise to concerns that the tree roots may also cause damage to both my property and my neighbour's property.
- The tree attracts a large pigeon population – who's constant and excessive excrement is also becoming a health concern, and entails much cleaning of the area to enable us to use that part of the garden.
- The original order has been in place for some 47 years + and I do not believe the new order should be for a retention span of a further 40-100 years.
- We are willing to plant an alternative species of tree in a different location in the garden – further away from properties, and of a type that we would be able to maintain and manage the care of more easily, whilst still providing wildlife benefits.

Two Right to Speak requests have been received from the occupiers of 8 Doctor Lane.

## **Comments from Tree Service Manager**

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

### **Outgrown Location**

Whilst the tree is a mature Sycamore with a large canopy the tree stands to the very western side of the garden and towards the rear.

The tree has been crown lifted to allow approximately 7 metres clearance underneath the tree. As a result of the tree's position and the pruning works the garden has an open feel.

As the tree's lower branches have been removed the tree's canopy is also well clear of the neighbouring structures and do not pose a threat as a result of swaying branches. The tree is likely to not require pruning to maintain clearance of structures for the next 7-10 years.

### **Dangerous because of its size**

Whilst tall trees can feel imposing, this does not equate to an increase in danger. Tree species capable of achieving a large size have evolved over millennia to cope with the stresses placed upon their size. As trees are reactive organisms they lay down reactive growth to cope with the additional stresses caused by increased wind loading.

The tree was inspected by an arboricultural consultant at the point of the application to fell the tree who found no health or structural reasons to justify the tree's removal. The tree was inspected again on 27<sup>th</sup> February 2019 by myself and I also found that the tree appears in good health with no visible structural concerns.

### **No Amenity Value (No decorative foliage/fruit, cultural or historic value and does not give public benefit)**

In the making of a Tree Preservation Order a Local Authority has to undertake an analysis of a tree's amenity value. Rotherham Metropolitan Borough Council, along with many other local authorities, uses the TEMPO system for analysing a tree's amenity level.

TEMPO assigns a numerical value to a tree's amenity with those trees scoring 12 or greater being considered worthy of providing a suitable level of amenity to justify a TPO. The Sycamore at 8 Doctor Lane was originally scored 14 at the making of the TPO. Following the inspection of the tree on 27<sup>th</sup> February, this has been altered to 16 due to the tree's condition being marked as Good rather than just Fair.

Whilst decorative fruit and foliage can add extra beauty to a tree these are not requirements for a tree to be worthy of protection under a TPO. This equally applies to the need for a tree to be associated with cultural or historic capital.

The tree is visible to the wider public in views from the streets: Doctor Lane, Winney Hill and The Hop Inge. Its position in a rear garden of a private property is replicated across the neighbouring properties and streets, where numerous mature trees can be seen in the street view.

Beyond this a tree does not require a high level of visibility to provide amenity. Just some of the benefits of mature urban trees 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

Honeydew Drip/ Bird Droppings and Falling leaves

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 Loss of One Tree is Not Significant

A recent TPO Appeal decision (Appeal Ref: APP/TPO/P4415/6736) confirms the stance of the Council in relation to the removal of individual trees where other trees exist:

*“The appellant points to the abundance of trees in the local area, with the suggestion that the appeal trees would not be missed. However, it is clear to me that when moving into pleasant and attractive areas with large trees residents must accept that the trees are an integral part of that setting. Without this acceptance, and if trees were removed without due consideration, there would be a gradual erosion of these characteristic qualities.”*

The location is a small rural town that is defined by its mature, green landscape that permeates through its street scenes. If the removal of individual protected trees was permitted without suitable justification then that character and the benefits described above would be lost.

Roots potentially damaging patio

Around the base of the tree there is an old weathered patio area. There is some minor movement of the patio slabs, however this was not significant and the slabs could be re-set or should the owners wish to the garden could be re-designed to move the patio to a different location in the garden.

TPO's retention span

All Tree Preservation Orders are created to protect the amenity, as provided by a tree, in the particular location of the tree. Therefore, conceivably, the TPO should last for the length of the tree's lifespan whereupon it can be replaced with a new tree that will then be covered by the same Tree Preservation Order.

Local Authorities do have powers to revoke TPOs where it has been shown the tree is no longer worthy of retention, so it is possible that in the future the TPO could be removed if it was shown that the tree no longer provided suitable amenity.

Willingness to carry out replacement planting

The potential for future replacement planting does not alter the current amenity value of this Sycamore tree, the loss to the area if it were removed and the justification of including this tree in a Tree Preservation Order.

Future applications proposing replacement planting can be made and its value will be weighed against the value provided by a healthy mature tree. However it should be noted that:

- New trees may not become established
- New trees provide a very small fraction of the benefits of a large, mature tree
- They will also take two to three decades before they start to provide comparable levels of amenity.

Therefore applications to remove a healthy tree and replace with a new sapling with no further justifications being provided (e.g. decline in the tree's health and safety, evidence showing damage to the neighbouring houses) are likely to be refused.

## **Conclusion**

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

## URGENT ITEM REPORT

### Item 2

**Update to appeal against refusal of application for construction of an exploratory well on land at Dinnington Road, Woodsetts**

**RMBC reference RB2018/0918.**

**Appeal reference APP/P4415/W/19/3220577**

### RECOMMENDATION

**That the Council's reason for refusal on highways grounds be withdrawn from the appeal process in light of the lack of evidence to support this aspect of the refusal**

### Background

Members will recall that planning application RB2018/0918 was recommended for approval, subject to conditions.

When the application came before Planning Board on 7<sup>th</sup> September 2018, Members refused permission for the following reasons:

*01*

*The Council consider that the proposed development, which will significantly increase the number of HGV movements through the village of Woodsetts, the surrounding highways and at the junction with the proposed access on Dinnington Road, would give rise to unacceptable highways safety issues, including increased likelihood of conflict with vulnerable road users such as cyclists, equestrians, children and the elderly such that it would be contrary to the National Planning Policy Framework which expects developments to include safe and suitable access for all users.*

*02*

*The Council considers that the development will have a detrimental impact on local residents on Berne Square in terms of noise nuisance and general disturbance, particularly during the construction phase but also during operation, due to the close proximity of the proposed access, contrary to Policy SP52 'Pollution Control' of the Local Plan and the National Planning Policy Framework.*

On 21<sup>st</sup> January 2019 the Council received formal notification from the Planning Inspectorate that an appeal against the refusal had been received.

The appeal will be determined via a Public Inquiry which is due to commence on Tuesday 11<sup>th</sup> June 2019 and is timetabled for 8 days.

As the application was refused contrary to officers' recommendation, officers have reviewed the information, taken legal advice and approached a number of private consultants in an attempt to engage external expert witnesses for the forthcoming Inquiry in order to avoid professional integrity issues arising.

#### Reason for refusal 1: Highways safety

Following the refusal of the planning application the Transportation Infrastructure Service have reviewed the information raised by Members in relation to safety concerns and, while recognising that these concerns are valid, do not consider that they would warrant a refusal of planning permission for the proposed development. For reasons of transparency and to allow an independent review of this assessment the Transportation Infrastructure Service has then attempted to commission consultants, who could re-assess the information, and represent the Council's case at the forthcoming Public Inquiry.

Responses were received from 5 separate consultants, who had reviewed the information but were unable to provide a robust case to support the reason for refusal. One further consultant has indicated that they would be prepared to provide expert evidence, in support of the highways reason for refusal, but the information provided is not considered to be sufficiently robust to defend the decision to refuse the application on the highways grounds. Furthermore, the consultant's services would come at a significant cost to the Council, which is a matter that officers consider is relevant to balance alongside;

- i) the Transportation Unit's considered position in respect of the highways safety implications of the proposed development;
- ii) the advice received from other consultants as mentioned above; and
- iii) the overall prospects of evidence in relation to the identified safety concerns being of sufficient weight to persuade an Inspector on appeal that the highways reason for refusal should be upheld.

Overall, therefore, officers recommend that Planning Board withdraw the highway reason for refusal as a ground for resisting the appeal. In this regard, it is relevant to note that advice has been sought from Counsel instructed to represent the Council at the forthcoming Inquiry. He has endorsed officers' recommendation as both pragmatic and appropriate in the circumstances.

#### Reason for refusal 2: Noise and general disturbance

This reason will still be defended at the appeal.

#### **Other relevant information**

- a) Rule 6 party

Woodsetts Against Fracking (WAF) have gained 'Rule 6' status, which means that they will have equal standing to the Council and the Appellant at the

Public Inquiry. Officers understand that WAF has instructed Counsel and a planning consultant to represent the group at the Inquiry. WAF have also indicated that they will call witnesses in relation to both highways safety and also the noise and general disturbance issue.

b) Publicity

No formal publicity has been carried out by the Council in respect of this recommendation.

c) Consultations

Streetpride (Transportation Infrastructure Service) – Consider that there are significant difficulties in defending the appeal on highway safety grounds and that the highway reason for refusal be withdrawn.

**Conclusions:**

Recommendation 1: Highways

Having had regard to:-

- i) the Transportation Infrastructure Services considered position in respect of the highways safety implications of the proposed development;
- ii) the advice received from other consultants as mentioned above;
- iii) the overall prospects of evidence in relation to the identified safety concerns being of sufficient weight to persuade an Inspector on appeal that the highways reason for refusal should be upheld;
- iv) advice received from Counsel; and
- v) the requirement for the Council to keep its case under review at all stages of the appeal process (along with the potential costs consequences of unreasonably failing to do so) officers recommend that Members now vote to withdraw the first ground for refusal.

Recommendation 2: Noise and general disturbance

Officers recommend that this ground for resisting the appeal is maintained.