

Report of the Director of Planning and Regeneration Service

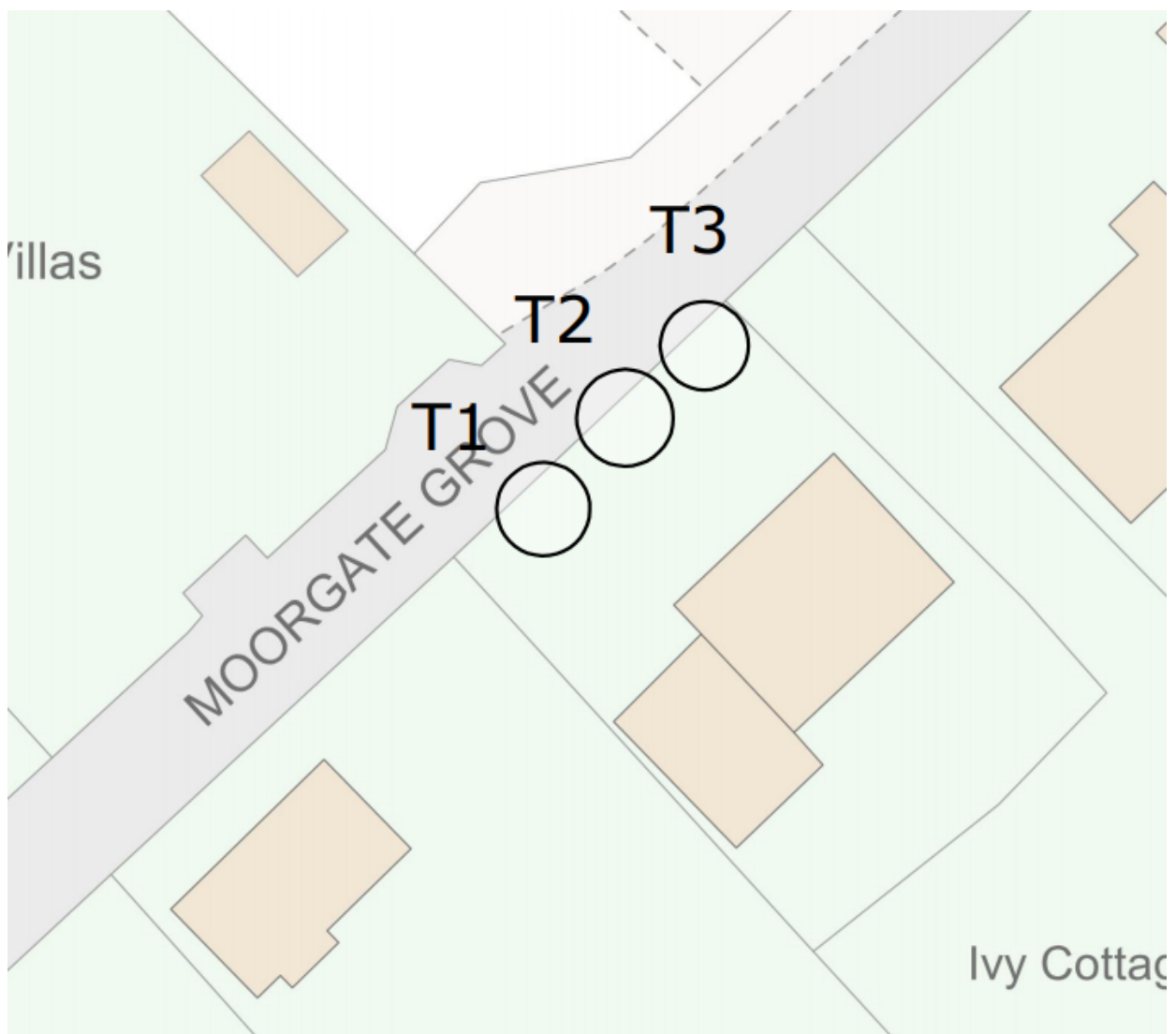
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Item 1

Proposed Tree Preservation Order No 6, 2019 – New House, Moorgate Grove, Rotherham

RECOMMENDATION:

That Members confirm the serving of Tree Preservation Order No. 6 2019 without modification with regard to the Lime tree and two Sycamore trees which are the subject of this report, situated on land at New House, Moorgate Grove, Broom Valley, Rotherham under Section 198 and 201 of the Town and Country Planning Act 1990.



Background

A Lime tree and two Sycamore trees are protected by Moorgate Conservation Area.

A section 211 notice (6 weeks notice to carry out works to trees in a Conservation Area) to fell a Lime tree (T1) and a Sycamore (T2) and prune a Sycamore (T3) was submitted under application reference RB2019/0948. The intended pruning work on T3 was to leave a tree of 15m height and 12 metres crown spread. The applicant stated that the trees overlap the house and cause shade and damp and allow squirrels to enter the roof.

The three trees are situated at the front of New House on the boundary of the property and Moorgate Grove. T1 is a mature Lime which appears in good condition. It offers high levels of amenity to the local area, being clearly visible from the public highway and of a species which is in keeping with its surroundings. In addition, the tree provides a range of eco system benefits to the local area and predates the construction of the house. Its loss would detract from the character of the area. Although the canopy of the tree currently touches the roof of the house this is an issue which can be addressed through pruning.

T2 is a Sycamore which has previously been heavily pruned. Therefore its form and condition are not as good as that of T1, though it still has a reasonable life expectancy ahead of it. As with T1, its loss would negatively impact upon the character of the area. The issues of shading and encroachment onto the roof that the tree poses could be resolved through pruning.

T3 is a younger Sycamore tree with an asymmetrical crown typical of trees which have grown in the shade of larger specimens. It is in contact with the boundary fence. The applied works (reduce to height of 15m and crown spread of 12 m) have been objected to on the grounds that they cannot be applied to the tree in question which is not 15m tall, nor has a crown spread of 12m.

As such, a Tree Preservation Order was placed on the trees under a new TPO No. 2, 2019 on 18 July 2019 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

A representation has been received from the occupier of Ivy House, a property at the rear of New House, objecting on the following grounds –

- Trees are or will overshadow the properties; the houses are dark as a result of the trees
- Trees have already caused damage to a boundary wall and could impede access to the access driveway
- Overhanging branches will impede use of driveway
- TPOs deter people from maintaining their trees

One Right to Speak request has been received from the objector.

Comments from Tree Service Manager

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

Trees are or will overshadow the properties; the houses are dark as a result of the trees

The trees stand to the north of the properties so they do not block any direct light into neighbouring properties.

The trees have historically been managed with the removal of low hanging branches to allow the access of light underneath the trees’ canopies. There are no reasons for this not to continue in the future once appropriate consents for pruning have been sought.

The tree has already caused damage to a boundary wall and could impede access to the access driveway.

No evidence of damage to the boundary wall has been provided by the home owner to justify the removal the neighbouring tree; however the wall that is being described is a small recent addition that could be easily repaired or removed without damaging the amenity of the Conservation Area. Should the wall collapse it is also highly unlikely to block the driveway due to its small stature.

Overhanging branches will impede use of driveway

Overhanging branches blocking the use of a person's property would be considered a nuisance. Therefore if permission is sought to prune branches overhanging the driveway to maintain access then permission will be given. This permission can be sought by either the owner of New House or Ivy Cottage.

TPOs deter people from maintaining their trees

Tree Preservation Orders have been in place for some 70 years and whilst some people may try to use the presence of a TPO as an excuse to not maintain their trees in a safe and healthy manner, they do not remove a tree owner's duty to maintain their trees so that they do not pose a foreseeable threat to people and property.

It should also not be assumed that the presence of tree protection on other properties in Moorgate Grove is the reason for large trees. It is just as likely that other residents appreciate the natural appearance and splendour of a mature tree.

Conclusion

The trees are good quality trees that provide an excellent level of amenity to the local area.

The TPO is not intended to stand in the way of their good management. It is apparent that T1 and T2 require pruning works to alleviate encroachment onto the property. Such work would require an application be submitted.

It is therefore 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 8, 2019 – Ulley Recreation Ground, Poynton Way, Ulley Rotherham

RECOMMENDATION:

That Members confirm the serving of Tree Preservation Order No. 8 2019 with modification (by way of identifying the tree as a Sycamore as opposed to a Norway Maple) with regard to the Sycamore tree which is the subject of this report, situated at Ulley Recreation Ground, Poynton Way, Ulley, Rotherham under Section 198 and 201 of the Town and Country Planning Act 1990.



Background

On 10 July 2019 Ulley Parish Council applied under a Six Weeks Notice of intent application to fell 2 No. Sycamore trees within Ulley Conservation Area at Ulley Recreation Ground. The Parish Council considered that the trees needed to be felled for safety reasons.

The Council's Tree Officer inspected the trees and considered that the eastern most tree was in a poor health, with limited future prospects and therefore the felling of the tree was acceptable.

In terms of the western most tree whilst it had suffered some minor storm damage it was not considered detrimental to the overall health of the tree and warranted protection.

Letters in support

7 Letters in support of the TPO have been submitted which state that:

- This tree is beneficial to the environment as it absorbs CO2 and toxins, and in addition cleans the air we breathe.
- This tree contributes to the character of Ulley Recreation Ground and the surrounding village.
- The tree appears to be in good condition and is a shame to be cut down if there are no major issues with it, after all it is a living thing.
- This tree is a habitat for wildlife.
- This tree provides a natural shelter from the sun for anyone using the park
- This tree is a mature well-established tree along with the other Norway Maple trees planted alongside it, removing this tree could compromise the health of other trees adjacent.
- This tree provides a natural sound barrier for traffic noise created on the M1 and M18 motorways.
- This tree provides a natural sound barrier from the wind turbines which are situated behind this tree, if the tree is removed flash and flicker from the turbine blades could be inflicted to nearby properties.

Objections

The Parish Council has appointed Anderson Tree Care to object on their behalf. The objector states:

- The Parish Council have meticulously followed the Government's guidance on the treatment of trees in Conservation Areas. You took advice and then served Notice to the LPA in the prescribed manner.
- If RMBC disagree with your appraisal of this situation and your proposed course of action, their best approach would be to propose an alternative course of action. Simply serving a TPO without any discussion is not constructive.

- This TPO has been served very badly. The plan is insufficiently accurate and the identification of the tree is incorrect.
- The TPO is not justified, the TEMPO system is not a system of amenity valuation and had it been applied properly, the tree would not have reached TEMPO's protection justification-threshold.

A Local resident on Main Street states that:

- Prior to Ulley Parish Council taking over the recreation ground RMBC do not maintain the trees. For this reason Ulley Parish Council should be allowed to cut the trees back.

The Clerk to Ulley Parish Council has requested the Right to Speak at the Meeting.

Comments from Tree Service Manager

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

- *Tree misidentified as a Norway Maple (Acer platanoides). It is a Sycamore (Acer pseudoplatanus), possibly a cultivar of some sort.*

It is accepted that the species of tree has been mis-identified; which will be updated if the TPO is confirmed. This mis-identification of the species does not however alter the appropriateness of the TPO. The tree is still proposed for removal, the tree still provides excellent levels of amenity and inadequate justification has been provided for its removal.

With regard to not identifying the particular cultivar of the tree, the Government guidance on serving a TPO does not require a tree to be properly identified; it tacitly acknowledges that distinguishing some species and cultivars (cultivated varieties) of tree from one another is difficult and that mistakes with the identification of less-common trees should not render a TPO meaningless.

- *The TPO-plan shows only one tree and has completely ignored the other five Sycamores, and two Beech trees. Although it is fairly obvious that the intention is to protect the tree closest to the house on Poynton Way it cannot be said to be clear.*

The location of the Sycamore tree to be protected is accurately marked on the TPO plan; the other trees on site are not of consequence to the TPO. Given the linear formation of the tree row and the position of the tree within this row, there can be no confusion as to the tree selected.

- *The TPO paperwork was accompanied by a spreadsheet, which I recognise as being based on the TEMPO system. That is Tree Evaluation Method for Preservation Orders. This system is quite widely used by LPAs but equally widely misused.*

It is industry standard to use this method and currently no widely recognised alternative exists. Misuse is subjective.

- *The RMBC-TEMPO appraisal refers to the tree as being in fair condition, which is reasonable, but then puts its retention span as 40-100 years, which is not at all reasonable. TEMPO's guidance notes state that trees that are clearly outgrowing their context or having an adverse effect on adjacent trees should be appraised as in the less than 10 years band. This effectively makes the tree's TEMPO score zero.*

Sycamore has an age range of 200-300 years, which even reduced due to fair condition (>40 years) is justified, the tree has not out grown its context and can be managed in its position for a considerable time to come. Quoted correctly the TEMPO guidance reads "...having an adverse effect on adjacent trees of better quality" the adjacent tree is not of better quality as it stands in the centre of the line of trees, T1 is situated at the end of the row and is in better condition than any of the others.

- *The Officer's TEMPO appraisal stated under notes: "Tight unions typical of the species, minor crown crowding from adjacent tree." I have to say describing something as typical for the species when there is doubt as to what the species might be seems something of a leap-of-faith.*

Typical for tree of age, condition and environment, can be safely retained with minor management.

- *The reasons you gave for removing the tree, and indeed the reason I suggested it to the Parish Council, was primarily because it is very close to the neighbouring house (12 Poynton Way) and likely only ever to be seen as too close.*

The tree is around 7m from the house; no evidence of damage has been presented or suggested. The crown is within 2m of the property however an acceptable clearance can be maintained through appropriate pruning.

- *You may recall that we discussed (by e-mail in June) what to do with these trees and my opinion was that removing the lot and replanting would be a perfectly reasonable proposition. Ideally the group would have been thinned quite a few years ago. We considered removing alternate trees (to leave space for the remainder to develop), although I believe the Parish Council rejected that idea.*

The Parish Council stated on the application form the trees would not be replaced, the loss of amenity is a principal consideration for protection.

- *I note here that RMBC were responsible for these trees up until recently. I presume maintenance of the trees was their responsibility*

until the Parish Council took on the site. (I'm aware that Ulley Parish Council started to lease the site only recently but I'm not familiar with any details of the lease.)

The Parish Council are responsible for grounds and vegetation management as per the lease, it is debatable if trees can be considered in the same context as grass cutting and shrub beds and if "maintenance" includes tree removal with no intention to replace.

- *In my opinion it would have been more productive for the Tree Officer to enter into dialogue with the Parish Council over the best way to manage this group of trees. Although the LPA have no right to refuse a Section 211 Notice, they are perfectly entitled to ask you to withdraw it and suggest an alternative course of action. Simply serving a TPO with no real indication as to why, or what might be an acceptable course of action seems rather heavy handed.*

The tree is a community asset of significant amenity value that passed the Council's criteria for protection. The TPO was served as a direct result of the intention to remove the tree.

On the application two trees were identified for work, one resulted in a TPO being served the other is in very poor condition and its safe retention is considered unjustifiable. To withdraw the application would have created an unnecessary delay in taking action on the hazardous tree.

Conclusion

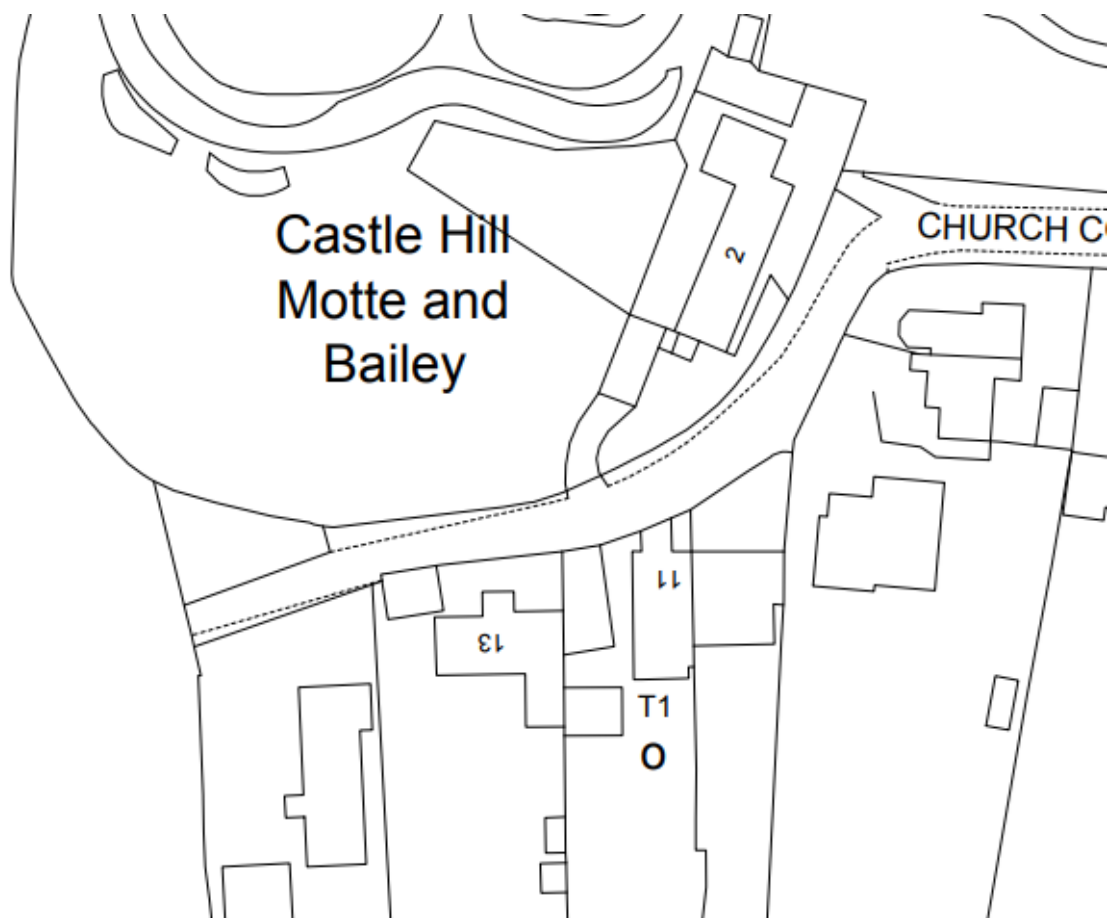
The tree on site is a good quality tree that provides good level of amenity to the local area. It is therefore considered that the objections to the Order have been carefully considered and that the Order has been made in accordance with Government guidelines. In this instance, it is recommended that the Order is confirmed following modification, by way of identifying the tree as a Sycamore as opposed to a Norway Maple.

Item 3

Proposed Tree Preservation Order No 9, 2019 – 11 Church Corner, Laughton-en-le-Morthen, Rotherham S25 1YB

RECOMMENDATION:

That Members confirm the serving of Tree Preservation Order No. 9 2019 without modification with regard to the Pine tree which is the subject of this report, situated on land within the curtilage of 11 Church Corner, Laughton-en-le-Morthen, Rotherham, S25 1YB under Section 198 and 201 of the Town and Country Planning Act 1990.



Background

The pine tree is protected by Laughton-en-le-Morthen Conservation Area.

A section 211 (6 weeks' notice) application to fell the Pine tree was submitted under application reference RB2019/1272.

It was considered that the tree was in a good condition with no significant defects and no evidence was found to suggest it was causing damage to

structures. The tree is visible from the road side and adjacent public spaces and provides good levels of public amenity. The felling of the tree would result in a loss of amenity to the Conservation Area. As such, a Tree Preservation Order was placed on the tree under a new TPO No. 9 2019 on 19 September 2019 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

A representation has been received from the occupant of no. 13 Church Corner objecting on the following grounds –

- Only 2 points over the TEMPO threshold for evaluating trees
- Tree is unsafe
- Public visibility
- Expediency
- Near-by trees

No Right to Speak request has been received.

Comments from Tree Service Manager

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

Only 2 points over the threshold

The Council uses the TEMPO assessment system to quantify the amenity provided by trees. This system has valued the tree in question as being worthy of protection under a TPO.

When assessing the TPO, the officer has been conservative when judging on some of the criteria, such as the 'Retention Span' category where the tree is marked as 20-40 years. It is felt this is easily achievable and in fact very likely to qualify for the higher bracket of 40-100 which would gain the tree an addition 2 points, further solidifying its protection worthiness.

Tree is unsafe

Although it is not the responsibility of the Tree Officer to ensure the safety of the tree (that remains with the tree owner) the condition of the tree was assessed at the time of the inspection.

The tree appeared in good health with no significant defects that the inspecting officer felt posed a significant hazard. Some crown lifting had taken place in the past and several lower branches had died which is fairly typical for the tree type.

The hazard of falling deadwood can be easily managed with permissible pruning that is exempt from a section 211 notification.

It is also to be expected that a tree sways in the wind, indeed this action is part of the tree's defences for coping with the pressures of wind. Trees are reactive organisms and will lay down additional strengthening wood in response to movement caused by wind.

Public visibility

The tree is clearly visible from outside the house though admittedly restricted from either side of the house. It is also clearly visible from the public footpaths to the west and south of the tree.

The footpath to the south does not appear on a public right of way map however a footpath sign does point down that way. In either case the southern aspect is highly visible from open farm land with a footpath running north to south.

Expediency

The application was to fell the tree; the Council can either object and serve a TPO or not object therefore allowing the removal to go ahead. In this situation the classification of 'Immediate threat' is correctly used.

Near-by trees

Part of the assessment and evaluation process of applying a TPO takes into consideration the gradual attrition of amenity and habitat, the loss of one tree

may not have much of an impact however the accumulative effect can be significant and needs to be controlled in order to maintain the amenity and feel of the Conservation Area. One of the principal ways a Council can preserve the amenity of a Conservation Area is by serving a TPO on threatened trees.

Conclusion

The tree is good quality with no significant defects and no evidence was found to suggest it was causing damage to structures. The tree is visible from the road side and adjacent public spaces and provides good levels of public amenity.

It is therefore considered that the objection to the Order has 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.