



SHEFFIELD CITY COUNCIL

Planning & Highways Committee Report

Report of: Director of Development Services

Date: 24th March 2015

Subject: Tree Preservation Order

Author of Report: Julie Watson, Urban and Environmental Design

Summary: To report an objection and to seek confirmation of Tree Preservation Order Nr. 397 at 28, Dore Road Sheffield.

Reasons for Recommendations

To protect trees in the interests of the amenity of the local environment.

Recommendations

Tree Preservation Order Nr. 397 should be confirmed unmodified.

Background Papers:

- A) Tree Preservation Order 397 (includes Order plan)
- B) General Location Plan
- C) TEMPO evaluation (T10)
- D) Objection received 14th November 2014

Category of Report: OPEN

REPORT TO PLANNING AND HIGHWAYS COMMITTEE

24th March 2015

TREE PRESERVATION ORDER NR. 397

28, Dore Road, SHEFFIELD. S17 3NB

1.0 PURPOSE OF REPORT

- 1.1 To report the objection and to seek confirmation of Tree Preservation Order Nr. 397.

2.0 BACKGROUND

- 2.1 Tree Preservation Order Nr. 397 was served on 9th October 2014 to protect a group of Beech trees in the front garden 28, Dore Road, Sheffield. In the interests of ensuring that all parties affected by the order were informed, Sheffield City Council served this order to surrounding houses. A copy of the Order is attached as Appendix A, and a general location plan as Appendix B.
- 2.2 In May 2014 a planning application for an extension at the neighbouring property at 30, Dore Road was received. The recommendation from the landscape officer was to refuse the application because of the significant encroachment of proposed foundations within the Root Protection Area [RPA] of the 3 trees just inside the boundary of the property at 28 Dore Road. The application was subsequently withdrawn and a revised proposal was submitted in September 2014. A similar recommendation was made to refuse the revised application because the slightly reduced footprint of the revised extension still impacted severely on the RPA of the trees within the boundary of no. 28.
- 2.3 This group of trees have significant visual amenity and are an important element in the character of the streetscene on Dore Road. These particular trees were deemed to be under threat from the proposed development above and therefore a decision was taken to serve a Tree Preservation Order to secure their retention.
- 2.4 A Tree Evaluation Method for Preservation Orders (TEMPO) assessment was carried out on site prior to serving the Order, and is attached as Appendix C. This assessment involved an initial assessment by the landscape officer and subsequent consultation and supporting inspection by an Arboriculturalist from the Parks and Countryside's Trees and Woodlands service who confirmed that they were in a suitably good condition for protection.

3.0 OBJECTIONS TO TREE PRESERVATION ORDER

3.1 An email objecting to the TPO was received from Mr Bill Anderson on 14th November 2014. Mr Anderson is an arboricultural consultant who had been employed to carry out a tree report as part of the planning application at 30 Dore Road. The full text of this objection is attached as Appendix D.

4.0 GROUNDS FOR OBJECTIONS AND OFFICER RESPONSE

4.1 The key objections raised by Mr Anderson are considered below and followed with a response:

4.2 OBJECTION: *'Along with the TPO documentation you have sent there is no information as to your appraisal of the tree's "amenity value". I would be grateful if you could explain how much amenity value a tree has to have for it to be worthy of protection. I note here that while the Blue Book has been withdrawn the new planning practice guidance [PPG] still requires you to have in place a system of structured amenity evaluation and it would seem reasonable for this appraisal to be sent out along with the TPO documentation.'*

4.3 RESPONSE: The amenity value of the trees has been assessed using the Tree Evaluation Method for Preservation Orders [TEMPO]. This is a scoring scheme which values a tree in relation to its condition, life expectancy, prominence in the landscape, 'other factors' and the magnitude of any threat, creating a threshold for deciding whether a tree preservation order is defensible or not. This method has been used by Sheffield City Council for over 10 years and is widely adopted by local authorities across the Country. It is not a requirement that we provide Mr Anderson with any record of assessments and the relevant documents are now attached to this report.

4.4 OBJECTION: *I think you should be aware that the TPO will make no difference to the threat from the development next door. I understand the legal position is that there is a right of abatement of nuisance (from a tree) that over-rides the TPO or any other protection. The definition of nuisance (in a legal sense) is not whether a tree causes inconvenience to a neighbour, but the mere fact that it extends over a boundary. Obviously it is in the nature of trees to not pay much heed to man-made boundaries and trees with branches reaching over them are commonplace. It is also obvious that most people do not routinely prune their neighbours' trees to prevent encroachment, which is not to say the right does not exist. What this means is that the TPO will make no difference to the threat from my client digging in his garden; if he sees fit to cut off an encroaching root that is up to him. The same applies to branches'.*

4.5 RESPONSE: the legal position is such that the mere encroachment of branches or roots over a neighbouring boundary would not enable a neighbour to trim a tree back to the boundary without seeking to obtain the consent of the local planning authority. The same could be said to apply to the trimming back of a root.

4.6 OBJECTION: *I fear this TPO has been served in an effort to support a refusal of planning permission, which is not an appropriate use of a TPO. Using TPOs as a tool of development control can only ever lead to people becoming wary of growing trees, which is exactly the opposite of what the*

urban environment needs’.

4.7 RESPONSE: A TPO can exist alongside the granting of planning permission, and the Council’s consideration of whether one is necessary is a duty imposed by the Town and Country Planning Act 1990 (“the 1990 Act”).

5.0 LEGAL IMPLICATIONS

5.1 Mr Anderson refers to “a right of abatement of nuisance (from a tree) that overrides the TPO or any other protection” within his objection. Section 198(6) of the 1990 Act states:

5.2 *6) Without prejudice to any other exemptions for which provision may be made by a tree preservation order, no such order shall apply—*

...

*(b) to the cutting down, uprooting, topping or lopping of any trees in compliance with any obligations imposed by or under an Act of Parliament **or so far as may be necessary for the prevention or abatement of a nuisance.***

5.3 The legislation endeavours to safeguard existing common law rights inasmuch as section 198(6) above enables an individual to take actions which are necessary to abate a nuisance.

5.4 The current legal position relating to the matter which is the subject of this report is not that a nuisance would constitute the “mere fact that [the tree] extends over a boundary”, according to the judgement in 2007 at the High Court (*Perrin v Northampton BC* [2008] 1 W.L.R. 1307), and its subsequent appeal.

5.5 The judgement in *Perrin v Northampton BC* clarified ‘nuisance’, in so far as it was defined as an ‘actionable’ nuisance, rather than a mere ‘common law’ nuisance. The distinction being such that any tree cutting works proposed would need to have the effect of preventing or abating actual or imminent damage which would be actionable in law. This means that the mere overhanging of a branch cannot be regarded as a nuisance which would allow a landowner to trim a tree’s branches back to their boundary without obtaining the consent of the local planning authority. The same could be said to apply to the trimming back of a root.

5.6 Regarding the making of TPOs and planning applications; Section 197 of the 1990 Act states that it shall be the duty of the local planning authority to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees. It also states that it shall be the duty of the local planning authority to make such orders under section 198 as appear to the authority to be necessary in connection with the grant of such permission, whether for giving effect to such conditions or otherwise.

5.7 The imposition of conditions (supported with a TPO) does not presuppose that planning permission will be refused. A TPO can exist alongside the granting of planning permission, and the Council’s consideration of whether one is necessary is a duty imposed by the Act. In fact Planning Permission has since been granted for a revised development at his Client’s property, no 30 Dore Road.

6.0 RECOMMENDATIONS

- 6.1 Following consideration of objections reported, Tree Preservation Order Nr. 397 at 28 Dore Road should be confirmed unmodified.

Tree Preservation Order
Town and Country Planning Act 1990
The Tree Preservation Order No 397 (2014)
Front Garden of 28 Dore Road, Sheffield, S17 3NB

The Sheffield City Council, in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—

Citation

1. This Order may be cited as Tree Preservation Order No 397 (2014) – Front Garden of 28 Dore Road, Sheffield, S17 3NB

Interpretation

2. (1) In this Order “the authority” means the Sheffield City Council.
(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

Effect

3. (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.
(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall—
(aa) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or
(bb) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,
any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 9th day of October, 2014

EXECUTED AS A DEED)
By Sheffield City Council)
whose common seal was)
hereunto affixed in the presence of)

SCHEDULE

Specification of trees

Trees specified individually

(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
T3	Fagus sylvatica (Beech)	OS Grid Ref:
T4	Fagus sylvatica (Beech)	SK 321815
T5	Fagus sylvatica (Beech)	

Trees specified by reference to an area

(within a dotted black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
	None	

Groups of trees

(within a broken black line on the map)

<i>Reference on map</i>	<i>Description (including number of trees of each species in the group)</i>	<i>Situation</i>
	None	

Woodlands

(within a continuous black line on the map)



28, DORE ROAD
LOCATION PLAN
Not to scale

TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

SURVEY DATA SHEET & DECISION GUIDE

Date: 01/10/14 Surveyor: Julie Watson [corroborated by Jerry Gunton - email 1/10/14]

Tree details
TPO Ref (if applicable): Tree/Group No: T3-T5 Species: Beech - 3no.
Owner (if known): Location: 28 Dore Road Kent Garden

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition & suitability for TPO; where trees in good or fair condition have poor form, deduct 1 point

5) Good	Highly suitable	Score & Notes 4 [1 point deducted for lean]
3) Fair	Suitable	
1) Poor	Unlikely to be suitable	
0) Dead/dying/dangerous*	Unsuitable	
* Relates to existing context and is intended to apply to severe irremediable defects only		

b) Retention span (in years) & suitability for TPO

5) 100+	Highly suitable	Score & Notes 4.
4) 40-100	Very suitable	
2) 20-40	Suitable	
1) 10-20	Just suitable	
0) <10*	Unsuitable	
* Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality		

c) Relative public visibility & suitability for TPO

Consider realistic potential for future visibility with changed land use

5) Very large trees with some visibility, or prominent large trees	Highly suitable	Score & Notes 4
4) Large trees, or medium trees clearly visible to the public	Suitable	
3) Medium trees, or large trees with limited view only	Suitable	
2) Young, small, or medium/large trees visible only with difficulty	Barely suitable	
1) Trees not visible to the public, regardless of size	Probably unsuitable	

d) Other factors

Trees must have accrued 7, or more points (with no zero score) to qualify

5) Principal components of arboricultural features, or veteran trees	Score & Notes 1
4) Tree groups, or members of groups important for their cohesion	
3) Trees with identifiable historic, commemorative or habitat importance	
2) Trees of particularly good form, especially if rare or unusual	
1) Trees with none of the above additional redeeming features (inc. those of indifferent form)	

Part 2: Expediency assessment

Trees must have accrued 9 or more points to qualify

5) Immediate threat to tree	Score & Notes 3, If current planning application for 30 Dore Rd is approved.
3) Foreseeable threat to tree	
2) Perceived threat to tree	
1) Precautionary only	

Part 3: Decision guide

Any 0	Do not apply TPO	Add Scores for Total: 16	Decision: TBC.
1-6	TPO indefensible		
7-11	Does not merit TPO		
12-15	TPO defensible		
16+	Definitely merits TPO		

APPENDIX D
Objection from Mr Anderson

Anderson Tree Care Ltd t 01246 570044
Garden Cottage, Park Street f 01246 570045
Barlborough, Chesterfield e info@andersontreecare.co.uk
S43 4TJ w www.andersontreecare.co.uk



The Director of Legal and Governance,
Sheffield City Council,
Town Hall,
Sheffield, S1 2HH.

Attention; Richard Cannon.

November 11th 2014.

Dear Sir,

Objection to Tree Preservation Order no 397.
Your ref LS/RC/69911.

Please accept this letter as objection to the above Tree Preservation Order (TPO). My client in this matter is Mr Mitchell Todd of 30 Dore Road via Chris Gothard Associates who are working on his house redevelopment project.

I note from your letter that the reason the TPO has been served is that the trees are of significant amenity value and that they are considered to be under possible threat from development in the property next door. That is my client's property.

Along with the TPO documentation you have sent there is no information as to your appraisal of the trees' "amenity value." I would be grateful if you could explain how much amenity value a tree has to have for it to deserve protection. I note here that while the Blue Book has been withdrawn the new planning practice guidance (PPG) still requires you to have in place a system of structured amenity valuation, (http://planningguidance.planningportal.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/#paragraph_008) and it would seem reasonable for this appraisal to be sent out along with the TPO documentation.

I note also that the TPO seems to protect 3 trees numbered 3, 4, and 5. Where are trees 1 and 2? This seems to be unnecessarily confusing.

I think you should be aware that the TPO will make no difference to the threat from the development next door. I understand the legal position is that there is a right of abatement of nuisance (from a tree) that over-rides the TPO or any other protection. The definition of nuisance (in a legal sense) is not whether a tree causes inconvenience to a neighbour, but the mere fact that it extends over a boundary. Obviously it is in the nature of trees to not pay much heed to man-made boundaries and trees with branches reaching over them are commonplace. It is also obvious that most people do not routinely prune their neighbours' trees to prevent encroachment, which is not to say the right does not exist. What this means is that the TPO will make no difference to the threat from my client digging in his garden; if he sees fit to cut off an encroaching root that is up to him. The same applies to branches.

I fear this TPO has been served in an effort to support a refusal of planning permission, which is not an appropriate use of a TPO. Using TPOs as a tool of development control can only ever lead to



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people becoming wary of growing trees, which is exactly the opposite of what the urban environment needs.

While the right of abatement means that my client is not really affected by this TPO he and I both agree that the process is a waste of resources.

I would be grateful if you could acknowledge receipt of this objection and keep me informed of any response. I would also be grateful if you could let me have details of your protocol for handling TPO objections as my recent experience has been that your system is not at all clear. I must note here that the new PPG is rather vague (at flowchart 1) but does point out that objections should be properly considered (paragraph 37). The Blue Book gives more background into the reasons for properly considering objections, which include Article 6 of the European Convention on Human Rights.

I look forward to hearing from you.

Yours faithfully,

W L Anderson. Dip.Arb(RFS). M Arbor A.