

## SUPPLEMENTARY INFORMATION

1. **Tree Preservation Order No. 468 - Ranfall, 15 Ranmoor Park Road, Sheffield, S10 3GX**

### **Additional Representations:**

Three further representations have been received from objectors to the TPO. One representation was made to an individual committee member and is included here in the interests of ensuring parity in decision making. It is reproduced in italics below:-

*I hope you don't mind me writing to you but I noticed you asking questions of [...] the Tree Officer at yesterday's Planning meeting. I was there objecting to the TPO at Ranfall.*

*I think you were trying to ask about pruning trees, and why [the Tree Officer] was recommending such minor pruning as being acceptable. I presume she told you that that's what the British Standard says and that we're more or less obliged to follow it. Well yes that's perfectly true but in reality does not reflect what used to happen before the Standard was reviewed in 2010. Prior to that we (the tree pruning fraternity) would apply to reduce the height and spread of a tree by approximately 30%, partly because that's what the Council used to do their street trees and partly because a 30% reduction ought to mean the tree didn't grow back for at least 5 years. More often it would be OK for 10 years.*

*Obviously costs spread over 10 years are much better than costs spread over only a couple of years. So the current Standard's implication that 12% is about right, is difficult to countenance when a tree's likely to have grown back in only a couple of years. Not only that but climbing out to the end of a branch to remove 12% of its length is much more difficult than removing 30% so the job's more expensive as well as not long-lasting.*

*Being much older than [the Tree Officer] I was able to comment on the Standard's revision and I did. I pointed out that we, the fraternity (I used to work for the Council pruning street trees) managed to prune by 30% for many years without the pruning killing any trees so what was wrong with sticking with that? While the review committee ignored me and others who commented similarly, they went with the idea that smaller wounds and leaving more leaves (photosynthetic capacity) must be better, there's actually no scientific evidence (referenced in the Standard) to confirm this one way or the other. I personally believe that we (the company I work for) are asked to remove trees because the pruning we're allowed to do does not represent good value for money.*

*[...]*

The second representation was sent by email to Democratic Services and is reproduced in italics below:

*In deciding on whether the tree legally meets the TEMPO assessment threshold I would respectfully ask all councillors to consider the following.*

- 1) *To meet the TEMPO threshold the assessment must score 12 or more points.*
- 2) *The tree officer has scored the tree 18 points, however, the residents after taking independent professional advice strongly disagree with this rating.*

### 3) **Part 1: Amenity Assessment**

#### a) **Condition & Suitability for TPO**

*This has been unreasonably awarded a score of 5. The tree may be in good condition but is not rare or of special interest and is barely visible beyond the grounds of the Ranfall Estate. Therefore, we question the score of 5 on the grounds of suitability. The Government's own guidance on issue of TPO's states: **TPO's should only be used to protect trees whose removal would have a significant impact on the environment and its enjoyment by the public.***

*It is unreasonable to say removal of the tree would have significant impact on the environment or public enjoyment. The immediate public are the residents surrounding the tree, none of whom gain enjoyment from the tree. Quite the opposite in fact, the tree causes distress, spoiling Ranfall resident's enjoyment of their gardens overshadowed by the tree. A more realistic assessment would rate at 3 suitable at best, however, when considering the overriding government guidance, a score of 1 unlikely to be suitable would be more realistic.*

#### b) **Retention in years (in years) & suitability for TPO**

*A score of 4 has been awarded by the tree officer. Whilst we would not argue with the 40- 100 years remaining life span this is not our understanding of the term retention. This category means the time before pruning is unavoidable, which in this case is "now." The recent grant of permission to prune by the tree officer confirms this fact. Furthermore, on the issue of suitability, the footnote relating to this point clearly states under the unsuitable heading (score zero). Trees which are an existing or near nuisance, including those that are clearly out growing their context. The tree is already a significant nuisance, in the expert opinion of our professional advisor and the residents it directly effects. As such the **score here should be zero (0).***

*i) The tree is 25 metres in height, some 3 times the height of Ranfall house and 5 times the height of No. 40 Ranmoor Crescent. Both properties being less than 12 metres from the tree whose canopy now spans some 15 metres in full leaf, see images page 3. It is our collective opinion that the tree has most definitely outgrown its location. Blocking light and obliterating views for many of our residents.*

ii) *The common lime tree, Tilia Cordata, sheds a sticky sap throughout the summer, covering paved and decking areas in the gardens of surrounding properties. This creates not just a huge issue with the need to constantly jet wash these areas but more importantly creates a significant health and safety risk when wet. Even knowing the risk, I have been caught off guard several times falling to the ground, luckily until now, without serious injury. On investigation of this sap issue, I discovered many councils up and down the country have removed similar trees from the public highway because of the significant health and safety risk their sap poses to the public.*

### **C) Relative public visibility & suitability for TPO**

*This has been quite fairly rated in our opinion at 2 Barely Visible, inconsistent with the early assessments relating to amenity value.*

### **D) Other factors**

*Trees must have accrued 7 or more points (with no zeros) to qualify.*

*In our opinion this threshold is not reached therefore other factors are irrelevant.*

*Nevertheless, if other factors were to be considered the tree in question is a common lime of no special value or interest therefore should only **score 1***  
***Trees with no additional redeeming features.***

### **4) Part 2: Expediency assessment**

*Trees must have accrued 10 points or more to qualify.*

*Not relevant since threshold not reached.*

### **5) Part 3: Decision guide**

*Under any fair and reasonable interpretation of the law and TEMPO assessment the tree does not merit a TPO.*

*Furthermore, retention of the tree as suggested by the tree officer creates a significant financial burden to our residents. The tree has the potential to grow another 5-10 metres in height with a proportional in diameter of its canopy. As previously stated, all residents and our independent expert advisor firmly believe the tree is already too big and has outgrown its location. If retained, we would need to pay for the maximum allowable crown reduction (12% of any one branch) every other year. Due to the inaccessibility of the tree such work comes at very high cost; recent quotes have been in the order of £2,500. With the current cost of living crisis this is yet another unaffordable cost for our residents.*

*Given the recent public protests in Sheffield over removal of trees on Rustlings Road I can understand the inclination to save any tree at any cost. This, however, should only be within a fair and reasonable interpretation of the law.*

The third representation was contained in an email responding to the notification of the site visit arrangements, and is reproduced in italics below:

*If you're going to be at the meeting, perhaps you could remind them that this is not a planning application, and unlike a planning application if there's any doubts as to the merits of the proposal, the default position should be to revoke the TPO and not simply accept the Officer's recommendation. (I believe the normal procedure for a planning committee is to follow the Officer's recommendation unless something's gone severely amiss.) You could also remind them that visibility alone is insufficient justification for a TPO.*

### **Officer Response – 1<sup>st</sup> Representation**

The points raised in this representation do not concern whether it is expedient in the interests of amenity to protect the tree with a TPO. Members are reminded that they are determining whether a TPO should be confirmed on that basis.

Government guidance states that amenity includes factors such as visibility, but visibility alone does not warrant an order. The Council must also assess the individual, collective and wider impact of the tree(s) with regard to factors such as size and form, rarity, cultural and historic value, the tree's relationship with the landscape and its contribution to a conservation area.

Expediency is also taken into account – government guidance refers to this in terms of whether there is a risk of works (including removal) being carried out to the tree which would have a significant impact on the amenity of the area. Members have been provided with an officer assessment that considers these factors and states a clear recommendation for confirmation of the TPO.

Members are obliged to consider all representations before deciding whether to confirm a TPO, but should keep in mind that neither the legislation nor the government guidance state that maintenance costs (and the extent to which pruning may or may not be acceptable with that in mind) is relevant to the test of whether confirmation would be expedient in the interests of amenity.

Instead, these are factors which the Council may consider when determining an application for consent to works to a protected tree i.e. whether the extent of the works are acceptable having regard to the need to protect the amenity value of the protected tree. Members are reminded that an application for works has already been submitted in respect of the tree protected by TPO 468, consent was granted (albeit for a lesser extent than proposed) and the statutory right of appeal of this decision to the Planning Inspectorate was not exercised.

Members are further reminded that a section 211 notice stating intent to remove the tree has previously been received by the Council and this prompted the making of the TPO in the first instance so as to prevent its removal. If the TPO is not confirmed and the TPO expires then this notice would provide a basis for the lawful removal of the tree in its entirety.

## Officer Response – 2<sup>nd</sup> Representation

The objector is confusing/conflating the separate elements of the amenity assessment section of a TEMPO assessment.

Section 1a of TEMPO “Condition and suitability for TPO” is an assessment of the tree’s **physical condition only**. 5 points are awarded for trees whose condition is “Generally free of defects, showing good health and likely to reach normal longevity and size for their species or may already have done so”.

1 point at this stage of the assessment, is reserved for trees in poor condition - “Trees in obvious decline, or with significant structural defects requiring major intervention to allow their retention, though with the outcome of this uncertain. Health and/or structural integrity are significantly impaired and are likely to deteriorate. Life expectancy is curtailed, and retention is difficult “

The tree in question has:

- No notable outward defects identified by me, or the objectors.
- Is of good vitality
- Is likely to reach normal longevity (if not felled)
- Has already reached a size commensurate with a tree of its species.

**Hence, your officer has given the tree 5 points for condition.**

The objector inserts an assessment of rarity and visibility into this initial assessment of amenity. These elements are separate, and considered in section 1c and 1d, where the tree can either gain additional points for these elements of the amenity assessment, or not.

The objector considers the impact of removal of the tree and the effect this would have on amenity and uses this to lower the tree’s score within the condition section. Again, this section is designated as a consideration of condition only. An assessment of whether removal of the tree would have a negative impact upon the amenity of the area is reached when the TEMPO assessment has concluded.

### Regarding retention span:

It is unreasonable to consider that retention span relates to “the time before pruning is unavoidable.” This concept, if taken to its logical end, would result in there being no justification for the retention of most of the city’s trees, whether they be in a park, on a highway or on private land. The Guidance Note for the use of TEMPO also refers to the importance of the assessment of retention span being made based on the assumption that the tree concerned will be maintained in accordance with good practice, and not subjected to inappropriate pruning. This implies that a retained tree

can be assumed to require maintenance during its retention span rather than the maintenance, inappropriate or not, negatively affecting this.

There is no definition of retention span in Government Guidance, which refers only to consideration of the tree's future potential as an amenity. TEMPO gives more definition, stating that the term relates to "an assessment of the tree's current age, health and context as found on inspection, and that trees would generally be found unsuitable for protection if they cannot be retained in their location for 10 years either because they are an existing **nuisance\***, or will become one." This includes those clearly outgrowing their context, or which are having an adverse effect on adjacent trees of better quality.

\*The definition of nuisance is addressed in government guidance relating to determining applications to work on trees already protected by TPO. Here nuisance is stated as meaning actionable in law, where it is causing, or there is an immediate risk of it causing, actual damage. The tree in question is not causing nuisance in this regard, there being no damage, and the tree standing 12m away from adjacent houses. Note, sap, shade and the ill opinion of the tree from those who are its current custodians are not included in this definition.

Where trees that are already protected do cause damage that could be defined as actionable nuisance, there is an exemption that allows for work to abate that nuisance. This allows only the work that is necessary to abate the damage and asks us to consider if engineering solutions rather than tree work can fix the issue (paragraph 82 of the guidance). The inference here being that even trees which are an actionable nuisance should not automatically be removed, **nor be considered as unworthy of the order that protects them.**

Were this tree to cause such issues, this would be addressed via the application process.

Outgrowing its location is not defined, but one could consider if the tree is causing the sort of damage that it would either be impossible, or unreasonably onerous to fix with the tree in situ, or if encroaching, where necessary pruning would render the tree something not recognisable as an amenity. Such issues are routinely taken into consideration when assessing the suitability of a tree for a TPO. This tree, sitting 12m away from structures, cannot be said to be outgrowing its location when considered in this regard.

#### Regarding sap as a health and safety risk:

Sap is commonly considered to be a natural, seasonal issue, not a reason to remove trees, and one that must be tolerated if we are to gain from the numerous benefits trees in cities confer.

The granting of 4 points for retention reflects the fact that this is a tree which we can expect, given its longevity of species, current condition and location (12m away from adjacent properties) to be able to be safely retained for a minimum of 40 years, and for this to be possible without the tree causing actionable nuisance that cannot be

remedied through routine maintenance (which can be applied for and granted through the TPO application process).

This objector uses the phrase 'if retained', confirming the desire to remove the tree, with the loss of amenity for current and future residents of the area.

The opinion of your officers is that the tree does not currently "need" pruning, it is not in contact with any structures or other objects. Consent was granted for the pruning works applied for because it seemed reasonable with regards the proposed impact of the pruning on the amenity of the tree, as a conciliatory gesture (because the original request to remove the tree resulted in the TPO being made) and because a refusal would likely be overturned at appeal.

Members are reminded that the decision before you today is whether the tree **should be protected because it is expedient in the interests of amenity to do so**. The advice of your tree officers is that the TPO should be confirmed.

Should you confirm the TPO, the residents can apply to the Council to remove/prune the tree again and if it were to be refused, they could appeal against that decision to the Planning Inspectorate, who would then independently assess the Council's decision in this case.

### **Officer response – 3<sup>rd</sup> Representation**

Members are aware of the matter before them, whether or not to confirm a Tree Preservation Order.

A Tree Preservation Order should be confirmed where you believe it is expedient in the interests of amenity to do so.

If members decide not to confirm the Order, there is no requirement to revoke the TPO due to the operation of Regulation 4 of the Town and Country Planning (Tree Preservation)(England) Regulations 2012 which provides amongst other details that TPOs must be confirmed within six months and they shall no longer have effect on the date on which the authority decide not to confirm the order:

As already noted within this supplementary in response to the first objection above Government guidance states that amenity includes factors such as visibility, but visibility alone does not warrant an order.

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