



SHEFFIELD CITY COUNCIL Planning & Highways Committee

Report of: Director of Regeneration & Development Services

Date: 18 November 2014

Subject: Tree preservation Order

Author of Report: Sam Thorn, Urban & Environmental Design

Summary: To report objections and to seek confirmation of Tree Preservation Order Nr. 393 at 2a Kingsley Park Grove, Sheffield.

Reasons for Recommendations

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

Recommendations:

Tree Preservation Order Nr. 393 should be confirmed unmodified.

Background Papers:

- A) Tree Preservation Order 395 (includes Order plan)
 - B) General Location Plan
 - C) TEMPO evaluation
 - D) Objection received 4th July 2014
 - E) Objection received 13th July 2014
 - F) TPO 808/11
-

Category of Report: OPEN

REPORT TO PLANNING AND HIGHWAYS
COMMITTEE 18TH NOVEMBER 2014

TREE PRESERVATION ORDER NR. 393
2a KINGSLEY PARK GROVE, SHEFFIELD

1.0 PURPOSE OF REPORT

1.1 To report objections and to seek confirmation of Tree Preservation Order Nr. 393.

2.0 BACKGROUND

2.1 Tree Preservation Order Nr. 393 was made on 12th June 2014 to protect a mature Beech tree in the front garden 2a Kingsley Park Grove, Sheffield. A notice informing the owner 2a Kingsley Park Grove was served on the same day. In the interests of ensuring that all parties affected by the order were informed, Sheffield City Council then served a second notice on 12th July 2014 which notified the surrounding houses. A copy of the Order is attached as Appendix A, and a general location plan as Appendix B.

2.2 In March 2014, a planning application (14/01157/FUL) was received for the development of a new property in the rear garden of 186 Millhouses Lane, which affected several trees already protected by a group TPO (see appendix F for TPO 808/11 and the applicant for planning permission's proposed layout plan). As well as these trees however, a large beech tree growing in the front garden of the adjacent property would have been lost due to the level of excavation required for the new building within the tree's Root Protection Area (RPA).

2.3 This tree has substantial visual amenity value and contributes significantly to the character of this leafy area of the city. As such, the Council considered whether to serve a Tree Preservation Order to ensure its retention. The tree is highly visible from the surrounding housing and commands a prominent position on the street when entering Kingsley Park Grove from Millhouses Lane.

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 direct consultation and inspection by an Arboriculturalist from Parks and Countryside's *Trees and Woodlands Service* for general condition and suitability for protection.

3.0 OBJECTIONS TO TREE PRESERVATION ORDER

3.1 A written objection to the TPO was received on 4th July 2014 from Mr Bill Anderson, the arboricultural consultant who had carried out a tree report as part of the planning application in respect of the rear garden of 186 Millhouses Lane, 14/01157/FUL. A second objection was then received from Ms L.S. Overall, the applicant for planning permission 14/01157/FUL at 186 Millhouses Lane, on 13th July 2014. The full text of these objections is attached as Appendix D.

4.0 GROUNDS FOR OBJECTIONS AND OFFICER RESPONSE

4.1 The key objections raised by Mr. Anderson have been considered below and followed with a response.

4.2 *OBJECTION: 'the tree has insufficient amenity value to justify protection and it is a waste of Council resources to serve a TPO when it will not have any effect.'*

4.3 *RESPONSE:* The tree's amenity value was assessed using the TEMPO system and scored highly, particularly for those areas relating to its visual merits (see Appendix C), The tree is a large specimen, located in a prominent position where it is visible along the whole street and from all of the surrounding houses.

4.4 *OBJECTION: 'This particular specimen is particularly unattractive having a one-sided crown due to having grown in the shade of a much larger tree. While that tree was protected, the Council's own staff removed it a few years ago. This tree is somewhat moribund and not showing any signs of growing to correct this asymmetry.'*

4.5 *RESPONSE:* The protected tree that Mr. Anderson is referring to was growing directly adjacent to the highway and causing structural damage to the pavement (See appendix E). This was therefore removed for structural reasons and bears no relation to this current case. As part of the TEMPO assessment, the tree in question has been estimated to have a life-expectancy of 40-100 years. Having an asymmetrical form does not sufficiently negate the amenity value of the tree to the locality as determined by the Council's TEMPO assessment of the tree.

4.6 *'OBJECTION: this tree is not at all suitable for the location. In fact if we were to choose trees for planting in this garden Beech would be the last tree to plant.'*

4.7 *RESPONSE:* The beech tree was established and growing in its current location long before the house was built and is showing no signs of causing structural damage to the pavement or the building.

4.8 The objections of Ms L.S. Overall, the applicant for planning permission 14/01157/FUL, have been highlighted below, along with responses to the claims.

4.9 OBJECTION: *'My first objection is that a forest tree (T1) in a small suburban garden is of limited amenity value.*

4.10 RESPONSE: As already highlighted in paragraph 4.4, the tree's amenity value has been assessed by a professional Arboriculturalist who considered it significant enough to warrant a TPO

4.11 OBJECTION: *My second objection is that T1 has caused and will continue to cause nuisance. Because of where it is, the beech tree will need further and regular attention. My evidence for this is that it was substantially pruned 10 years ago. When the present owners of 2a Kingsley Park Grove acquired the house the crown was braised and branches removed...*

4.12 RESPONSE: All trees require some sort of maintenance within an urban setting, either in collecting the fallen leaves over autumn or in removing limbs where necessary. However, refusing to grant protection on the grounds that the tree requires regular maintenance calls the whole TPO process into question. TPOs are not intended to prevent trees from ever being pruned. They are intended to allow the current tree stock to be managed in agreement with the local authority, where it is the case that it is considered expedient for the Local Authority to make them.

5.0 LEGAL IMPLICATIONS

5.1 Section 197 of the Town and Country Planning Act 1990 ("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 (see below) 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.

5.2 Following on from this, section 198 of the 1990 Act states that, if it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order.

5.3 Tree Preservation Orders are made under section 198 of the 1990 Act and in accordance with the Tree Preservation (England) Regulations 2012. Regulation 7 of which states that, in the event that a TPO is

made, the authority shall not confirm an order which they have made unless they have first considered objections and representations duly made in respect of it and not withdrawn.

- 5.4 As objections and representations were duly made in respect of Tree Preservation Order 395, the local authority is required to consider them. Government guidance issued by the Department for Communities and Local Government recommends that local authorities establish non-statutory procedures to demonstrate that their decisions at the confirmation stage are taken in an even-handed and open manner. The consideration of objections and representations about the TPO by the Planning and Highways Committee facilitates this.

6.0 REASONS FOR RECOMMENDATIONS

- 6.1 Several objections to the planning application (14/01157/FUL) were submitted from the surrounding properties and all of these highlighted the loss of the trees on site as being a particular concern. That applies only to those trees currently protected by the group TPO. The beech tree in question was not shown on any plans as being removed so did not raise any concerns apart from its owner. Had this been the case and the surrounding residents had known of the threat to the tree, it is considered that there would have been further objections in a similar manner. This was evidenced by several neighbours who were deeply concerned by the idea that this tree could be lost, and approached council staff whilst on site on several occasions.
- 6.2 This level of response supports the results of the TEMPO assessment that the tree does in fact have strong amenity value and is a feature of the streetscene worth protecting.

7.0 RECOMMENDATIONS

7.1 Following consideration of all objections received it is considered that the reasons for confirming the order outweigh the objections that have been made and therefore it is recommended that Tree Preservation Order Nr. 393 Kingsley Park Grove, Sheffield, should be confirmed unmodified.

Appendix A

Tree Preservation Order
Town and Country Planning Act 1990
The Tree Preservation Order No 393 (2014)
Front garden of 2A Kingsley Park Grove, Sheffield

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 393 (2014) - Front garden of 2A Kingsley Park Grove, Sheffield

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—
 - (a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or
 - (b) 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 10th day of June, 2014

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



Duty Authorised Signatory



14/124400

SCHEDULE

Specification of trees

Trees specified individually

(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
T1	Fagus Sylvatica (Beech)	328834

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)

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

© This map is based on Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office. All rights reserved. Ordnance Survey Licence No. LA075035

Reproduced from Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office. Ordnance Survey Licence No. LA075035

TREE SCHEDULE



TREES SPECIFIED INDIVIDUALLY
(Encircled in black on the map)

T1 *Fagus sylvatica*
(Beech)

TREES SPECIFIED BY REFERENCE TO A GROUP - None

TREES SPECIFIED BY REFERENCE TO AN AREA - None

TREES SPECIFIED BY REFERENCE TO WOODLAND - None

OS Grid Reference SK 328834

**SHEFFIELD CITY COUNCIL
PLACE**

REGENERATION & DEVELOPMENT SERVICES
DIRECTOR: David Caulfield

**TREE PRESERVATION ORDER
No. 393**

TRC:

2a KINGSLEY PARK GROVE

SCALE

1:500 @ A4

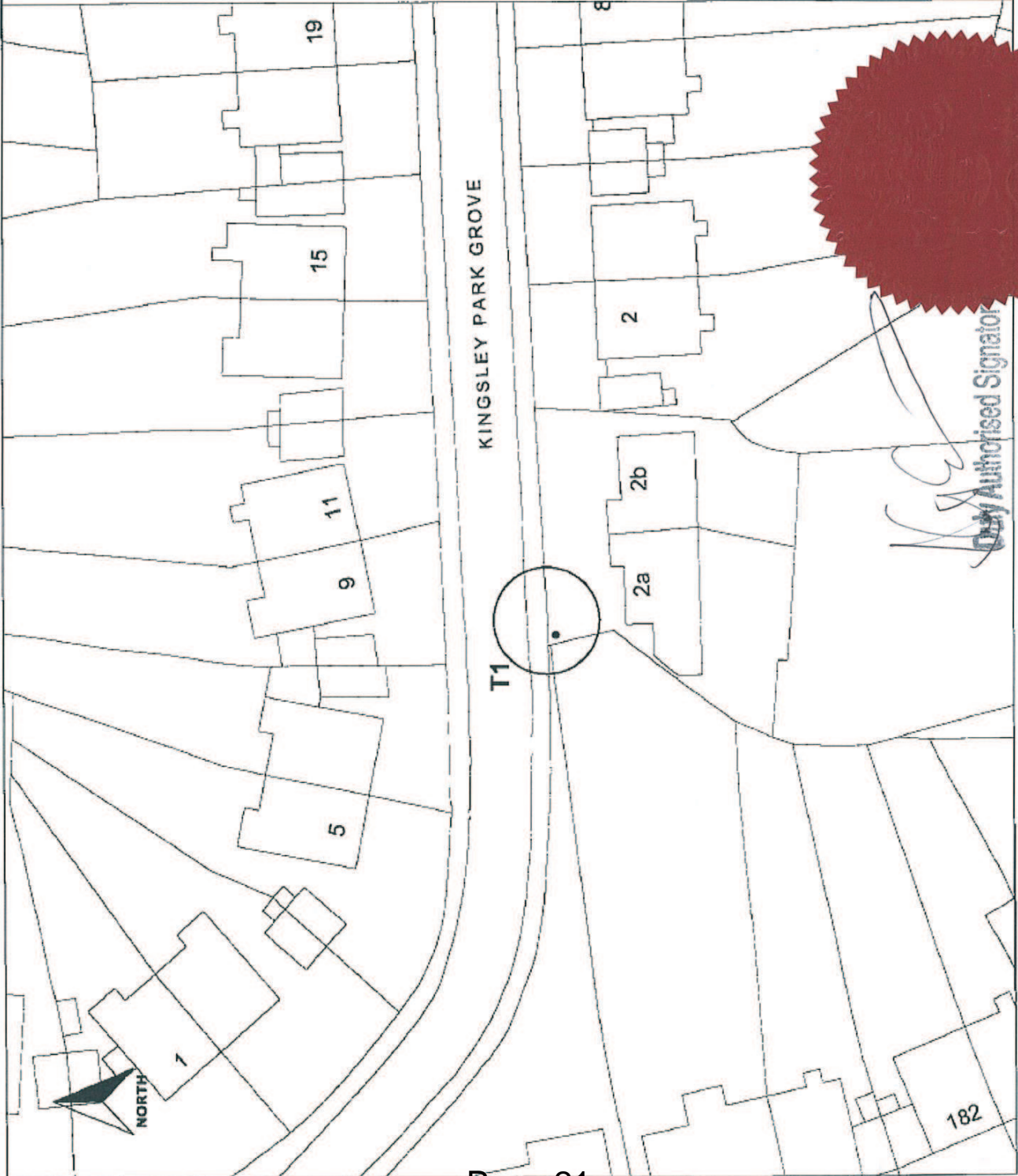
Date: MAY 2014

Drawn by: ST

Checked by: ST

Sheet No:

A4/UED/808/393



Handwritten signature
Duty Authorised Signator

03/11/14

Appendix B

© This map is based on Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller Her Majesty's Stationery Office. Crown Copyright and database rights Ordnance Survey 100018816, 2014

Reproduced from Ordnance Survey mapping with the permission of the Controller Her Majesty's Stationery Office. © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Licence No. LA016025

TREE SCHEDULE



TREES SPECIFIED INDIVIDUALLY
(Encircled in black on the map)

T1 *Fagus sylvatica*
(Beech)

TREES SPECIFIED BY REFERENCE TO A GROUP- None

TREES SPECIFIED BY REFERENCE TO AN AREA - None

TREES SPECIFIED BY REFERENCE TO WOODLAND - None

OS Grid Reference SK 328834

**SHEFFIELD CITY COUNCIL
PLACE**

REGENERATION & DEVELOPMENT SERVICES
DIRECTOR: David Caulfield

**TREE PRESERVATION ORDER
No.393**

TITLE:

2a KINGSLEY PARK GROVE

SCALE:

1:500 @ A4

Drawn by: KH

Checked by: ST

Date: MAY 2014

Drawing No:

A4/UED/808/393



Appendix C

TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

SURVEY DATA SHEET & DECISION GUIDE

Date: 22.04.14	Surveyor: SPAM THORN + JOHN HARRISON
Tree details	
TPO Ref (if applicable):	Tree/Group No:
Owner (if known):	Species: BEech
	Location: 2A KINGSLEY PARK GROVE

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
- 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 **ANGLES BUT NOT SIGNIFICANT ENOUGH TO DETRACT FROM OVERALL VISUAL AMENITY.**

Score & Notes **5**
MATURE BEech, HIGHLY VISIBLE ON THE STREET. SLIGHT ASYMMETRICAL CROWN VISIBLE FROM CERTAIN

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

- 5) 100+ Highly suitable
- 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 **THROUGHOUT THE CANOPY.** potential of other trees of better quality

Score & Notes **4**
NO SIGNS OF POOR HEALTH WITH CLEAR TRUNK + NO EPICORMIC GROWTH AROUND THE BASE. SPRING GROWTH VISIBLE

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
- 4) Large trees, or medium trees clearly visible to the public
- 3) Medium trees, or large trees with limited view only
- 2) Young, small, or medium/large trees visible only with difficulty
- 1) Trees not visible to the public, regardless of size

- Highly suitable
- Suitable
- Suitable
- Barely suitable
- Probably unsuitable

Score & Notes
5.

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
- 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)

Score & Notes
1

Part 2: Expediency assessment

Trees must have accrued 9 or more points to qualify

- 5) Immediate threat to tree
- 3) Foreseeable threat to tree
- 2) Perceived threat to tree
- 1) Precautionary only

Score & Notes **5.**
CONSTRUCTION OF THE DEVELOPMENT WILL DESTROY A LARGE PART OF TREES ROOFS

Part 3: Decision guide

- Any 0 Do not apply TPO
- 1-6 TPO indefensible
- 7-11 Does not merit TPO
- 12-15 TPO defensible
- 16+ Definitely merits TPO

Add Scores for Total:
20

Decision:
TPO

Appendix D

186 Millhouses Lane, Sheffield, S7 2HE

Assistant Chief Executive Legal and Governance
Sheffield City Council
Town Hall
Pinstone Street
Sheffield S1 2HH

Sunday, 13 July 2014

Dear Sir/Madam

Re you ref: LS/RC/68715 Tree Preservation Order 393

The background to this order is pertinent to the City Council's decision as it arises from an application for planning permission on my land. As I am concerned both about the environment and to continue to live in harmony with my neighbours on Kingsley Park Grove I can assure the City Council that the proposed works have taken full account of all the trees involved in the project. *From the start of the planning process* (over 18 months ago) and at every stage, arrangements for the proposed development have been put in place to preserve trees, whenever and wherever possible. ATPO for the beech tree in the garden of 2a Kingsley Park Grove is an unnecessary, heavy handed and time consuming response by the City Council.

Further, document A4/UED/UED/808/393 does not accord with those from the Land Registry as there was a transfer of land between 188 and 186 Millhouses Lane in November 1993. This may be the reason that officers failed, in the first instance to notify me, formally, of the intention to TPO T1 (ref LS/RC/68715/393).

My first objection is that a forest tree (T1) in a small suburban garden is of limited amenity value.

My second objection is that T1 has caused and will continue to cause nuisance. Because of where it is the beech tree will need further and regular attention. My evidence for this is that it was substantially pruned around 10 years ago. When the present owners of 2a Kingsley Park Grove acquired the house the crown was raised and branches removed.

Yours faithfully



L.S.Overall

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



Richard Cannon Esq.
Sheffield City Council,
via e-mail.

July 4th 2014.

Dear Mr Cannon,

**Tree Preservation Order no 393, Kingsley Park Grove,
reference LS/RC/68715.**

I see from a lamp post on Kingsley Park Grove, that you have served a TPO on a tree at number 2A. I would be grateful if you would register this correspondence as an objection to this Order.

My grounds for objecting are that the tree has insufficient amenity value to justify protection and that it is a waste of Council resources to serve a TPO when it will not have any effect. I note that one of the reasons for serving the Order is that the tree's amenity value is significant.

The principle of "amenity value" is unclear and the Council have not published any direction on what might contribute to amenity value, or indeed what threshold value should trigger protection. As Beech is not really a suitable species for a small front garden it is hard to imagine how it has any amenity value at all. This particular specimen is particularly unattractive having a one-sided crown due to having grown in the shade of a much larger tree. While that tree was protected the Council's own staff removed it a few years ago. This tree is somewhat moribund and not showing any signs of growing to correct this asymmetry.

I am aware that the Council use the TEMPO system for tree appraisal but would point out that it is not and does not claim to be, a system of amenity valuation.

I should further point out that the Council currently seem to employ only one person to deal with TPO matters and that he is overworked and behind with his routine duties. Adding to his workload therefore seems somewhat short-sighted, especially when it is a tree that is close to the end of its useful life and likely to soon generate requests for remedial work.

It might be useful to consider whether an application from the owner to remove the tree could reasonably be refused. If the answer is "no" then clearly the TPO would serve very little purpose.



ISO9001
Elcoat

ISO14001
Elcoat

OHSAS18001
Elcoat



VAT Reg No. 471150474
Company Reg No. 5872995
Registered in England and Wales

You may be aware that the Council, through their agents, Amey, have published a list of trees suitable for planting in their street tree replacement program. Beech is only mentioned as suitable for “wider grass verges.” (https://www.sheffield.gov.uk/in-your-area/report_request/plants/trees.html) As the front garden in which this tree grows has considerably less space than a “wider grass verge” and is then immediately against the house, (a verge would presumably have a pavement between it and the property) I think it is plain that this tree is not at all suitable for the location. In fact if we were to choose trees for planting in this garden Beech would be the last tree to plant.

While I am retained by a neighbour (to this address), to advise about trees in relation to a planning application, that matter is unaffected by this tree and my objection is based mainly on the fact that I consider this TPO to be a waste of Council resources. In fact as things stand the Council would be better to expend their scarce resources on reviewing their existing TPOs rather than adding to their obligations. (I am a Sheffield resident and Council resources are at least partly mine.)

Perhaps you would be good enough to acknowledge this objection and give me some indication of when I might expect a reply? I would also be grateful if you could confirm that your procedures for considering objections comply with Article 6 of the European Declaration of Human Rights. By my understanding this means ensuring that my objection is considered fairly, preferably by someone not involved with the initial serving of the Order. The Blue Book recommended a hearing or sub-committee (from the Planning Committee) to ensure the matters raised are properly examined.

You might find it helpful to note that as far as I am aware, while the Blue Book (that is Tree Preservation Orders, a guide to the Law and good practice DETR 2000) has supposedly been withdrawn, the promised replacement publication has not yet been produced. While the internet-based protocol seems to comply with the Blue Book procedures, the Blue Book itself appears to still be the best place to find the relevant information as to what is reasonable.

All things considered, I fail to see that this tree justifies this amount of scrutiny and recommend that you revoke this order and waste no more resources upon it.

Yours faithfully,

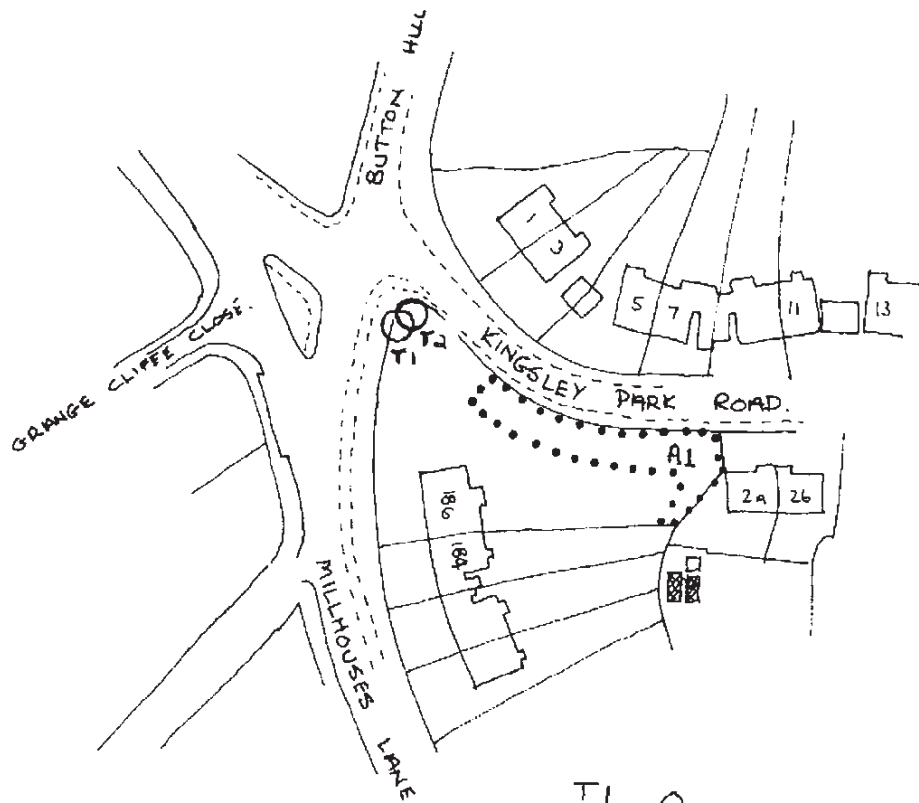
A handwritten signature in blue ink that reads "W L Anderson". The signature is written in a cursive, flowing style.

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

Appendix E



Appendix F



T1. Quercus spp.
 T2. Ulmus spp.

A1. The several. Fagus, taxus, Quercus, castanea, Ilex + Populus standing in the area numbered A1 on the map

TPO 808/11

C

This page is intentionally left blank