



SHEFFIELD CITY COUNCIL Planning & Highways Committee Report

Report of: Director of City Growth Service

Date: 1st March 2022

Subject: Tree Preservation Order No. 446,
15 Brincliffe Gardens, S11 9BG

Author of Report: Vanessa Lyons, Community Tree Officer (planning)

Summary: To seek confirmation of Tree Preservation Order No. 446

Reasons for Recommendation

To protect two trees of visual amenity to the locality

Recommendations

Tree Preservation Order No. 446 should be confirmed unmodified.

Background Papers:

- A) Tree Preservation Order No. 446 & map attached.
 - B) Tree Evaluation Method for Preservation Orders (TEMPO) assessment attached.
 - C) Objection letters attached.
 - D) Appraisal of General Character of Conservation Areas
 - E) Conservation Area - Brincliffe and Psalter Lane
 - F) Historic photograph of Brincliffe Gardens
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Category of Report: OPEN

CITY GROWTH SERVICE

REPORT TO PLANNING & HIGHWAYS COMMITTEE

1st March 2022

TREE PRESERVATION ORDER NO. 446

15 Brincliffe Gardens, S11 9BG

1.0 PURPOSE

1.1 To seek confirmation of Tree Preservation Order No. 446.

2.0 BACKGROUND

2.1 Tree Preservation Order No.446 ('the Order') was made on 27th October 2021 to protect two mature lime trees (*Tilia x europaea*) located on the highway, directly to the north of the front boundary of 15 Brincliffe Gardens. A copy of the Order, with its accompanying map, is attached as Appendix A.

2.2 The two trees are located within the Nether Edge Conservation Area, on the public highway to the north of the front boundary with 15 Brincliffe Gardens. They are fully visible from the vantage point of the highway, mature, and without any major, outward defects. They form part of an avenue of lime trees which run alongside both edges of the highway. A description of this Nether Edge Conservation Area on the Sheffield City Council website states that it is noted for its avenues of lime trees, with the Brincliffe and Psalter Lane area in particular characterised by "roads framed by roadside trees" which are considered a "significant unifying factor" of the Conservation Area. The retention of these trees, which form an integral part of the Conservation Area is therefore highly desirable.

2.3 The land on which the trees stand is located within the Nether Edge Conservation Area, so the trees are already protected to a limited extent by Section 211 of the Town and Country Planning Act 1990. This requires that notice is served upon the Council before works to a tree can be carried out. This gives the Council the opportunity to make a Tree Preservation Order where that is considered expedient. Notice of intention to remove the two highway lime trees was served upon the Council on 5th October 2020, it being understood that this was to facilitate creation of a driveway which crosses the public footpath.

2.4 While an application for permission to create a vehicular access was previously made, permission for this has not been granted. Full planning permission (ref: 19/04301/FUL) has been granted for some development work

to take place at number 15, namely the demolition of outbuildings and erection of a three-storey side extension to a dwellinghouse, but this specifically did not include permission to create a driveway. It was noted in the decision notice for the permission that the creation of permeable hardstanding and the widening of the entrance to form a vehicle access (driveway) “do not require planning permission”. It was therefore removed from the description of the proposed development prior to permission being granted. Said work could be carried out pursuant to existing permitted development rights, albeit the Council’s approval for how that work would affect the adjacent highway would be treated as a separate matter which could potentially be approved under the provisions of the Highways Act 1980.

- 2.5 It was advised within the decision notice that an application under the Highways Act for the vehicle access across the footway and highway verge would be unlikely to be supported due to the damage it would cause to the adjacent highway trees. Therefore, upon receipt of the section 211 notice to remove the trees, it was deemed expedient to serve a TPO in order to protect them.
- 2.6 A person would not be able to remove trees which do not belong to them without proper approval, as they would be at risk of damaging property they do not own or control. Nevertheless, the risk posed to the trees was such that it was deemed expedient to further protect them with a TPO, which both has the effect of attaching more severe offences for unauthorised work to the trees while also restraining existing permitted development rights.
- 2.7 The TPO does not affect the permission as that was explicitly stated to not include approval for the construction of a driveway. It also did not include approval for the removal of the trees which are now the subject of the TPO.
- 2.8 A condition inspection of the trees was carried out in September 2021 by two assessing officers at the time. The trees were found to be in reasonable condition, with no obvious health and safety defects requiring major intervention. A TEMPO assessment was conducted by the assessing officer (see Appendix B) who scored the trees with 16 points respectively, indicating the trees as definitely meriting protection under a Tree preservation Order.
- 2.9 The TEMPO Assessment demonstrated that the trees are fully publicly visible, in reasonable health, with a life expectancy of up to forty years. Being in an avenue, they form part of a group which is desirable to retain due to its cohesion. The trees also contribute to the character of the conservation area, as lime avenues are noted as a significant unifying factor of the Nether Edge area as a whole.
- 2.10 One objection to the TPO was submitted by the applicant under the s211 notice (see Appendix C for the full text).

The objection concludes with a series of points which summarise the basis on which it is made. The relevant points are reproduced below, with the Council’s response following.

- *1 – There is no need for these trees to be protected. The decision as to how they are pruned or whether they are removed is entirely the Highway departments. It is not expedient for the Planning Department to involve themselves and this TPO will make no difference to anything.*

The full text of the objection makes reference to the Government's guidance on TPOs and asserts that it states that trees that are in good management do not need to be protected by TPOs. The guidance actually states that "*it is **unlikely to be necessary to make an Order in respect of trees which are under good arboricultural or silvicultural management***" (emphasis added). While the trees which are subject to the TPO can be considered to be under good management, a threat to the trees was identified which originated outside of the Council. Therefore, the Council's management of the trees is immaterial as to whether it was considered expedient to apply a deterrent for the carrying out of works to the trees, which have been identified as having sufficient amenity value to justify protection.

- *2 – Although the trees are prominent in the highway, Brincliffe Gardens is not a major thoroughfare and very few people are likely to pass by. There are numerous other trees in the street and these two are extremely nondescript specimens. In other words, the trees have low amenity value.*

Local planning authorities can make a Tree Preservation Order if it appears to them to be "*expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area*", as per the legislation. In assessing amenity, Government guidance states that the local authority must consider the visibility of the tree(s), and the trees' individual, collective and wider impact, which should take into account the size and form of the tree, its future potential as an amenity, rarity, cultural or historic value and contribution to the landscape and to the conservation area. This must then be followed by an assessment of expediency before making an order. The greater the risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area, the greater the expediency.

The trees in question have been assessed using the Tree Evaluation Method for Preservation Orders. This is a widely used and accepted method of assessing trees for protection under an order, and which considers visibility, and the individual, collective and wider impact of the tree, to arrive at an evaluation of amenity, followed by an assessment of expediency. The combination of the TEMPO assessment and the threat to the trees identified through receipt of the s211 notice was enough for it to be considered expedient to make the TPO.

- *3 – This TPO could be looked upon as an attempt to withdraw a planning permission, which cannot possibly be a proper use of the TPO system.*

A TPO cannot have the effect of withdrawing planning permission. Having planning permission which includes works to a tree subject to a TPO removes the requirement to separately obtain consent for those works under regulation 13 of the Town and Country Planning (Tree Preservation)(England) Regulations 2012. It is one of the exceptions under regulation 14.

In addition, the planning permission in question is clear that, due to the removal of the vehicle access and removal of trees from the description of the proposed

development, together with further clarification within the directives, the permission does not include the driveway. Therefore, as it does not include any aspect which would grant permission for the removal of the trees, the making of the TPO cannot be seen as a means of withdrawing that. Any permitted development rights which may exist for the driveway can be restricted through the making of the TPO. This is described in regulation 14(1)(a)(vii) of the aforementioned 2012 regulations.

- *4 - The TPO seems most likely to make an already complicated situation even more complicated, which is also not a desirable state of affairs.*

The effect of the TPO is straightforward – it makes it an offence to carry out works to the trees it protects. The view of officers was that, without sufficient deterrent, there was a possibility the trees could be removed. It is clear there was a proposal for their removal hence why the section 211 notice was received.

3.0 VISUAL AMENITY ASSESSMENT

- 3.1 Visibility: The trees are clearly visible from a public vantage point, standing as they do in the highway.
- 3.2 Individual, collective and wider impact: The trees are reasonable in form, with a life expectancy of 20-40 years. This secures their future potential to provide amenity to the area for some time to come. The trees form part of an avenue which is cohesive in its form, the aesthetic value of which would be lessened via the removal of two of its' constituent parts. As part of a prominent avenue, the trees can be considered as making a contribution to the landscape and a significant contribution to the character of the Nether Edge Conservation Area.
- 3.3 Brincliffe Gardens remains one of the most complete examples of Lime avenues on the Kenwood estate, with nearby avenues such as Albany, Montgomery, Kenbourne and Rundle Road being far less complete. The Council's own Conservation area documents for this area highlight the tree lined streets as being a feature (See point 11.8 in Appendix D and points 8.0 of Appendix E). The same documents also make reference to the degradation of these avenues through the creation of driveways (see 8.3 and 9.1 Appendix E). Historical photographic evidence (Appendix F) shows Brincliffe Gardens as already tree lined with young trees at a time when only three houses had been built, indicating that the street was created with the trees as an integral part of the street's plan. As such the trees clearly meet the criteria which the local authority is asked to consider when assessing amenity. Their loss would add to the degradation of the conservation area, and their retention is therefore desirable.
- 3.4 A Tree Evaluation Method for Preservation Orders (TEMPO) assessment was carried out by the assessing officer at the time and is attached as Appendix B. The assessment produced a clear recommendation for protection.

4.0 EQUAL OPPORTUNITIES IMPLICATIONS

- 4.1 There are no equal opportunities implications.

5.0 ENVIRONMENTAL AND PROPERTY IMPLICATIONS

- 5.1 Protecting and retaining significant mature trees from felling feeds into achieving the commitments made in both the Council's one year plan and Climate Emergency Declaration
- 5.2 Protection of the trees detailed in Tree Preservation Order No.446 will benefit the visual amenity of the local environment.

6.0 FINANCIAL IMPLICATIONS

- 6.1 There are no financial implications.

7.0 LEGAL IMPLICATIONS

- 7.1 A local authority may make a Tree Preservation Order (TPO) where it appears that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area (Section 198, Town and Country Planning Act 1990).
- 7.2 A TPO may prohibit the cutting, topping, lopping or uprooting of the trees which are the subject of the Order. It may also prohibit the wilful damage or destruction of those trees. Any person who contravenes a TPO shall be guilty of an offence and liable to receive a fine of up to £20,000.
- 7.3 The local authority may choose to confirm a TPO it has made. If an Order is confirmed, it will continue to have legal effect until such point as it is revoked. If an Order is not confirmed, it will expire and cease to have effect 6 months after it was originally made.
- 7.4 A local authority may only confirm an Order after considering any representations made in respect of that order. A single objection has been received and a detailed response is provided above.

8.0 RECOMMENDATION

- 8.1 Recommend Provisional Tree Preservation Order No.446 be confirmed.

Michael Johnson, Chief Planning Officer

1st March 2022