

Richard Cannon,
Legal Services Officer,
Sheffield City Council,
Town Hall,
Sheffield, S1 2HH.

May 12th 2022.

Dear Sir,

Objection to Tree Preservation Order No. 450 (2022),
5 Cawthorne Grove, S8 0NB.

Please accept this letter as an objection to the above Tree Preservation Order (TPO), which was served without warning on May 5th 2022.

My client in this matter is [REDACTED] who is the owner of number 5 Cawthorne Grove, which is in the throes of refurbishment. [REDACTED]. The previous owner of the house lived here for 80 years, and in latter years allowed the garden to become overgrown.

Background.

[REDACTED], although he has not owned this property for very long, is a long-term resident of the neighbourhood. [REDACTED]'s extension and refurbishment of the property seem to have been undertaken with the intention of making an elderly property more suitable for modern life. The property itself stands some way back from Cawthorne Grove and is actually accessed from Todwick Road to the northeast. That is the front doors of this and the adjoining properties face Todwick Road.

The garden to number 5 is almost 40 metres long albeit quite narrow, and the neighbouring properties have gardens of a similar length, similarly narrow. I think it's reasonable to say that most people casually passing by on Cawthorne Grove would not know that these gardens belong to the houses, as they are hidden from view by trees.

Some neighbouring properties have car parking spaces and garages at the foot of their gardens, immediately adjacent to Cawthorne Grove. Some of these appear to be largely unused. One of the reasons for this (I have been told) is that people are wary of their parked cars being damaged by debris falling from trees. Many of the gardens adjacent to Cawthorne Grove are also significantly overgrown, seemingly largely left to grow wild. In fact I note that one of the nearby houses (number 23) has recently cleared part of the garden and obtained permission to build 3 houses. A main sewer drain runs through the gardens, not far from the tree. I have also been told that in the past there have been issues over the drain being blocked by tree roots.

I note that the TEMPO (Tree Evaluation Method for Preservation Orders) evaluation states that the TPO was considered because a member of the public had reason to believe that the owner was intending to fell the tree. The TEMPO form further notes that that the tree is "not in (a) Conservation Area and so is unprotected."



The tree.

The tree is a Beech tree and at first sight is a fine specimen. I measured the trunk diameter to be 900 mm and estimate its height to be approximately 15 metres. The crown spreads reasonably symmetrically and is probably 20 metres across, biased slightly to the south and west. It reaches almost to the middle of the road, some 11 metres. Measuring the height of trees in this sort of position is always difficult because there is no clear view of the top and bottom of the tree from the same place. Therefore, measuring the tree's height using the laser devices that are routinely used nowadays is impossible. The tree growing in an elevated position over the road doesn't help either. Suffice to say although there is no clear view of the tree from anywhere, it is fairly obviously an imposing specimen.

Imposing or not it is not perfect; the TEMPO-form refers to a cavity in the trunk visible from the road. At the other side of the tree is another cavity, and there is also another one at the base of one of the lower branches. There was also a broken branch stub with some decay. A probe inserted into the road-facing cavity revealed it to be 300 to 400 mm deep, although this was deep downwards, not deep horizontally. Both trunk cavities fairly clearly collect water as tracks of the overflow can be seen on the trunk below the holes. How this water gets in the trunk is not obvious but it might be that a crack somewhere allows it to accumulate and get into the cavities. I don't think the holes themselves are large enough to catch much rain water.



Photograph 1.

Photograph 1 is a view of tree as seen from the road looking roughly north-eastwards.

Photograph 2 is a view of the tree as seen from the road looking roughly north west.



Photograph 2.



Photograph 3.

Photograph 3 is a view of the tree as seen from the house, to the north, looking southwards.

Photograph 4 is a view of the cavity on the south side of the tree. Although it seems water flows out of this hole and the cavity has for a fairly soggy black mud in the bottom.



Photograph 4.



Photograph 5

Photograph 5 shows the cavity from further away. I took this in an effort to better show the staining on the trunk. (The rope belongs to the climber, who is out-of-shot.)



Photograph 6 shows the cavity at the base of the branch that emerges to the south, with the decayed branch stub on the east side.

Photograph 6.



Photograph 7.



Photograph 8.

Photographs 7 & 8 show the cavity on the north side of the tree.

I do not consider the cavities to be structurally significant at this time. There is no sign of active decay and the cavities do not appear to meet up anywhere although precisely how water manages to accumulate in them is not obvious. The Officer also noted some minor die-back in the upper crown, but I struggled to see to what she was referring. (This is the time of year when foliage is expanding so it's not impossible that any minor die-back has been obscured by leaf growth in the week between our inspections of the tree.)

Legislation.

The Law that allows local planning authorities to serve TPOs is contained in the Town and Country Planning Act. It's actually part 8 ("Part VIII" in Government-speak) of the 1990 Act.

As is usual with legislation there are numerous dated alterations and amendments, but the only bit that matters is the part that states *“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.”* Despite all the amendments and alterations there is no further clarification of what “expedient” or “amenity” actually means. There’s also no definition of “tree” or “woodland” either; for clarification we have to turn to the Government’s “Planning Practice Guidance,” which is a supplement to the NPPF and should be regarded as the Secretary of State’s opinion as to what the Law actually means. (<https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas>)

This “Guidance,” despite its name is not merely guidance, it is the “rules” and should be followed just like the NPPF should be followed. Pointedly, the Guidance tells us that *“Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public.”* It also states fairly categorically that *“Public visibility alone will not be sufficient to warrant an Order.”* The Guidance makes these comments after also advising local planning authorities to *“develop ways of assessing amenity value of trees in a structured and consistent way.”*

“Amenity Value” is the driver of the TPO legislation, the Guidance refers to assessing the amenity value at almost every stage of the TPO administration, no fewer than 14 times in its 173 paragraphs. It requires local planning authorities to develop “ways of assessing the amenity value of trees in a structured and consistent way....” Hence the use of the TEMPO system.

The Guidance seems to recognise the conundrum that many people would rather not have a tree in their ownership than have a tree that the Council could annex, and the overall feel of the Guidance is that TPOs should be used sparingly. Although some conservation-minded people seem to be of the opinion that all trees should be protected, the Guidance is written from the point-of-view that this is not the case. Whoever wrote it seemed to understand that over-use of the TPO system might lead to individuals being reluctant to plant trees. The author also seemed to understand that there is a certain perversity in a local planning authority being able to demand that people grow trees without their taking any corresponding responsibility for the tree.

I think it is also fair to note that it was never the Government’s intention to protect all trees; had it been there would have been no need for TPOs, they would merely have extended the Forestry Act to make it an offence to ever cut any tree down without permission from them or their cohorts in local government.

The requirement for an amenity valuation of a protected tree is the reason for the TEMPO evaluation, which unfortunately is not, and does not claim to be a system of “amenity valuation.”

The TEMPO system and the evaluation.

The first thing to note about TEMPO and its use is it’s very easy to manipulate the scores it generates. For example a tree in “good” condition gets more credit than a tree in “fair” or “satisfactory” condition. Similarly why does a tree with a 20 to 40 year retention-span get

more credit than one with only 10-20 years? And guessing at a tree's likely rate of growth with much precision is always something of a how-long-is-a-piece-of-string-type question.

I consider it would be more sensible to have broader ranges in the TEMPO retention span section. In my opinion aligning with the Helliwell System¹ would be sensible. Under 5 years for a zero score, and 5-40 years being regarded as the same as the one and two point sections. I think the Helliwell system recognised the futility of guessing whether a tree might outgrow its position to any greater accuracy.

In this case I have no particular dispute with the TEMPO scores awarded by the Tree Officer although under "public visibility" she notes it is directly adjacent to the public highway and it's therefore clearly visible to the public. I accept that one side of the tree is visible to the public, but as it's some 6 or 7 metres from the edge of the footpath there is no public place from which the whole tree can be seen. The TEMPO guidance notes don't actually address this topic but it seems reasonable to point out that passers-by do not get a 360 degree view of the tree. I should point out that the Government Guidance doesn't say much about whether visibility of a tree ought to mean a full 360 degree view either.

TEMPO also addresses expediency which the Guidance reasons should mean "are the trees in good management?" (At paragraph 10.) We must assume here that the Council have presumed the tree not to be in good management, which in this case I regard as an extremely unfair presumption. [REDACTED] is aware of his obligations as a tree owner and understand his duty-of-care to the public and his neighbours.

The TEMPO appraisal states that a request was received from a member of the public who had reason to believe my client was intending to fell the tree. I do not know where the member-of-the-public got this idea. Whatever the situation, an unsubstantiated rumour does not increase the amenity value of the tree by over 20%; 3 TEMPO points of 13. The TPO is a precaution only so it should score a single point. Had this been the case then the overall TEMPO score would not meet the TPO threshold.

I should say here that this is one of TEMPO's major failings; a tree's amenity value does not increase just because somebody has tired of it; the implication that a tree in a Conservation Area that has had a Section 211 Notice to remove it served, does not suddenly jump in value. By that logic any item that is no longer wanted suddenly find its value increased, which makes no sense at all.

I note that the TEMPO appraisal has given the tree a single point under "other factors." It could have been scored -1 for being "generally unsuitable for their (its) location." If we were selecting tree species for planting in a relatively small garden, behind a terraced house, Beech would be one of the last species on the list of options. I entirely accept that finding unsuitable trees, sometimes in quite ludicrous locations, is one of the great joys (when it's not a frustration) of work in urban arboriculture, although that doesn't mean that the local planning authority should be forcing householders to grow and maintain unsuitable trees.

I should point out here that the TEMPO comments about the tree being un-protected and this somehow making it more deserving of protection, is not a proper reflection of the TPO regulations. The implication in this statement is that all trees deserve protection which was never the Government's intention. In my experience many people who own protected trees

¹ The Helliwell System; Arboricultural Association Guidance Note 4. "Visual Amenity Valuation of Trees and Woodlands" 2008.

presume that a TPO means that the local planning authority will take some responsibility for them and thus pay them less heed. Frequently TPO-protection delays proactive tree maintenance as the tree owner finds the TPO-application procedures onerous and thus off-putting.

Conclusions.

1. Beech is not a sensible tree species for growing in a relatively small garden.
2. There is nothing about this tree that sets it apart from many other similar trees.
3. Although the tree is currently in reasonable condition, there are sufficient questionable features to mean it doesn't justify TPO protection.
4. There is no evidence of anyone having any intention to remove the tree. **[REDACTED]** is quite happy to manage the tree as his duty-of-care to the general public and his neighbours dictates, for as long as he owns it.
5. I do not consider a member of the public with unspecified reasons to believe there's an intention to fell a tree is sufficient justification to serve a TPO on a tree that is not out-of-the-ordinary.
6. Although this is a reasonable tree in reasonable condition, I do not consider it to be the sort of tree that should be protected with a TPO.

I trust you will reconsider this TPO.

Yours faithfully,

[REDACTED]

Enclosure: TEMPO evaluation form as supplied by the Planning department at SCC.

TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

SURVEY DATA SHEET & DECISION GUIDE

| | |
|----------------|----------------------------|
| Date: 29.04.22 | Surveyor: Vanessa Lyons |
|----------------|----------------------------|

| | | |
|---|--|----------------|
| Tree details TPO Ref 450 Owner (if known): | Tree/Group T1 Location: 5 Cawthorne Grove- front garden | Species: Beech |
|---|--|----------------|

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition & suitability for TPO

- | | |
|--------------------------|-------------------------|
| 5) Good | Highly suitable |
| 3) Fair/satisfactory | 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 |
| 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 |
| 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 |

Score & Notes
4. Medium tree situated directly adj. public highway

d) Other factors

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

- 5) Principal components of formal arboricultural features, or veteran trees
- 4) Tree groups, or principal 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)
- 1) Trees with poor form or which are generally unsuitable for their location

Score & Notes
1

Part 2: Expediency assessment

Trees must have accrued 10 or more points to qualify

- 5) Immediate threat to tree inc. s.211 Notice
- 3) Foreseeable threat to tree
- 2) Perceived threat to tree
- 1) Precautionary only

Score & Notes
3. Request to TPO tree from member of public who had reason to believe the owner was intending to fell. Tree not in conservation area so is un-protected.

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:
13

Decision:
TPO defensible.

This page is intentionally left blank