

Tree Preservation Order 2014 Number 582 (119 Copes Way, Chaddesden, Derby)

SUMMARY

- 1.1 This report summarises and comments on objections to a Tree Preservation Order (TPO) on an ash tree at 119 Copes Way, Chaddesden, Derby and recommends confirmation of the TPO without modification.

RECOMMENDATION

- 2.1 To approve confirmation, without modification, of Tree Preservation Order 2014 Number 582 (119 Copes Way, Chaddesden, Derby)

REASONS FOR RECOMMENDATION

- 3.1 Confirmation of this TPO would control works to the ash tree on site, avoiding a loss of amenity value to the immediate and wider area.

SUPPORTING INFORMATION

- 4.1 On 29th July 2014, Derby City Council, in exercise of the powers conferred by sections 198, 201 and 203 of the Town and Country Planning Act 1990, made the above Tree Preservation Order (TPO) on an ash tree at 119 Copes Way, Chaddesden, Derby as shown on the plan attached as Appendix 2.
- 4.2 The reason why the TPO was made is cited as: "The tree indicated in this Order is proposed for protection in the interests of visual public amenity. The tree is situated in a prominent position in relation to properties and open space on Seagrave Close. The tree contributes materially to the amenities of the locality by playing an important part in providing a sense of scale and maturity and forms a backdrop to the open space off Seagrave Close."
- 4.3 Four letters, attached as Appendix 3, objecting to the TPO were received from Mr and Mrs Lomas at 15 Morley Gardens, Mr Wood at 17 Morley Gardens, Mr Parkes at 19 Morley Gardens and Ms A Haviland and Mr G Richardson at 119 Copes Way.
- 4.4 The objections from Mr and Mrs Lomas, Mr Wood, Mr Parkes and Ms A Haviland and Mr G Richardson are summarised below followed by the Director's response.

- 4.5 **Objection point one – Mr Wood, Mr Parkes and Ms A Haviland and Mr G Richardson:** Expressed concern that the making of the TPO fails to address the nuisance caused by the tree in relation to a reduction in light levels to the rear of properties on Morley Gardens, particularly during the afternoon and evening, which will only get worse as the tree grows.
- 4.6 **Director's response to point one:** A requirement for light is a personal and subjective matter. Some people prefer direct sunlight, while others enjoy the shade. In English law, there is no effective right to light from across a neighbour's land. Under the Prescription Act 1832 a right to light can be acquired, although it is severely limited. Using it in relation to trees is problematic and generally unsuccessful. A tree owner is not obliged to prune a tree to provide light to a neighbouring property.
- 4.7 **Objection point two – Mr and Mrs Lomas, Mr Wood, Mr Parkes and Ms A Haviland and Mr G Richardson:** All expressed concern that the making of the TPO fails to address the nuisance caused by the tree in relation to leaves and seeds shed during the autumn, which block their guttering and drains, as well as the brook to the rear of their properties.
- 4.8 **Director's response to point two:** Leaves and seeds are carried freely on the wind and are outside our control. Clearing of leaves from gutters and pathways and weeding are normal routine seasonal maintenance that property owners are expected to carry out. Pruning will not help this problem as trees will quickly replace removed leaves. *Taken from our "Tree management" webpage.* Highways and Engineering has confirmed that they do not consider the tree will affect the actual watercourse, as it is far enough away from the bank for it not to be a concern. In relation to keeping the brook clear, they have confirmed that they inspect the course of the brook once a year during the winter months. Also, local residents have been written to informing them that they have "riparian" responsibilities in relation to the brook, meaning they have to ensure that their half of the brook is kept clear of obstructions. It is understood that recent flooding in the area was contributed to by residents allowing hedgerow clippings from their property to fall in to the brook, which blocked a culvert further downstream.
- 4.9 **Objection point three – Mr Wood, Mr Parkes and Ms A Haviland and Mr G Richardson:** The making of the TPO fails to address the nuisance caused by the tree because of its size and the fact that it overhangs properties on Morley Gardens. There is more likelihood of damage occurring to properties on Morley Gardens because the tree is located in the rear garden of 119 Copes Way and is closer to Morley Gardens. Therefore, during a storm, debris is more likely to fall towards Morley Gardens because of the prevailing wind.
- 4.10 **Director's response to point three:** Trees are living organisms that naturally lose branches and best practice dictates they are inspected by a qualified tree professional on a regular basis for reasons of safety. This responsibility rests with the owner. No guarantee can be given as to the absolute safety or otherwise of any individual tree, as even apparently sound trees can fail. Overall risk though to human safety is extremely low. Figures quoted in the National Tree Safety Group document on "Common sense risk management of trees", published by The Forestry Commission in July 2011, show that the annual risk of death from trees is 1 in 10,000,000 or less if high wind incidents are excluded. No evidence from a qualified tree professional has been presented to us to suggest that the tree is in a dangerous condition and should be removed, or that other works to the tree are required.

- 4.11 **Objection point four – Mr Wood and Ms A Haviland and Mr G Richardson:**
Enquiries were made on 2 August 2013 to see if there was a TPO on the tree. At that time, was informed by the Council that there was no TPO and the owner of 119 Copes Way would not need permission to have the tree removed. Owner did not do anything last year, but the new owner now wants to remove the tree, based on the reply given by the Council in August 2013.
- 4.12 **Director's response to point four:** When the tree was first considered in August 2013, due to limited resources which doesn't allow us to do a site visit for every TPO query, it was thought at that time, using Google Street View and Bing aerial maps, that the tree wasn't quite deserving of a TPO. When the tree, however, was brought to our attention again in July 2014, it was looked at more closely with the officer concerned taking advice from their manager and one of our arboricultural officers. It was determined this time that the tree was deserving of a TPO having undertaken a site visit. Although we try to be as consistent as possible with our advice, each case for making a TPO is different and will always involve a degree of subjectivity.

OTHER OPTIONS CONSIDERED

- 5.1 The only other option considered is not to confirm the order, which would mean that the tree on site would be left without any level of statutory protection, which could lead to its removal or damage.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Estates/Property officer Service Director(s) Other(s)	
For more information contact: Background papers: List of appendices:	Graham Toon 01332 642117 graham.toon@derby.gov.uk None Appendix 1 - Implications Appendix 2 - Location Plan Appendix 3 - Letters of objection Appendix 4 - Photographs

IMPLICATIONS

Financial and Value for Money

- 1.1 None arising from this report.

Legal

- 2.1 The Local Planning Authority must, before deciding whether to confirm the Tree Preservation Order, consider any duly made objections.

The Local Planning Authority may modify the Tree Preservation Order when confirming it.

Personnel

- 3.1 None arising from this report.

IT

- 4.1 None arising from this report.

Equalities Impact

- 5.1 None arising from this report.

Health and Safety

- 6.1 None arising from this report.

Environmental Sustainability

- 7.1 Trees, such as the ash tree discussed in this report, are an important part of urban areas, because they:
- provide a wealth of benefits relating to biodiversity. In our urban areas, whether located on streets, or in parks, gardens or schools, trees are unique in their ability to support a variety of wildlife
 - clean the air, reduce temperatures, and counteract our polluting lifestyles by absorbing and storing carbon dioxide through a process known as photosynthesis. During this process, which enables them to grow, carbon dioxide is converted into stored carbon. This is why trees are sometimes referred to as 'carbon sinks'

- provide oxygen for people, and catch dust and pollutants on their leaves. By filtering out polluted air, they help reduce the incidence of asthma, skin cancer and stress-related illness
- provide natural winter insulation and summer shade, which could help reduce the annual heating and cooling expenditure of homeowners.

Property and Asset Management

8.1 None arising from this report.

Risk Management

9.1 None arising from this report.

Corporate objectives and priorities for change

10.1 This decision would assist in taking forward the Corporate Priority of achieving 'An inspiring place to live'.

Appendix 2



15 Morley Gardens
Oakwood
Derby
DE21 4QQ

Tel:

31 July 2014

For the attention of Graham Toon

Derby City Council
Neighbourhood Directorate
The Council House
Corporation Street
Derby
DE1 2FS

Dear Sirs

Proposed Tree Preservation Order at 119 Copes Way, Chaddesden, Derby (TPO Number 582).

In connection with the above proposed TPO, we wish to object to this proposal, and in fact have no objection at all to this tree being taken down and cannot understand why you should propose placing a Preservation Order on this tree in the first place.

The tree causes several problems, the main being that the leaves have contributed to the silting up the brook which runs between 119 Copes Way and Morley Gardens, and therefore this has meant that the sewer to our street is blocked and causing flooding, as were experienced with the recent storms. We have reported the silting up of the brook and the blocked gulley by email to Streetpride and understand a member of the Highway Team will contact us but nothing has been done so far, (Streetpride reference number 925571), neither has the gulley in the street been cleared.

An acknowledgement of this letter would be appreciated and we have no objection to you replying by email and our address is

Yours faithfully

Ron and Jackie Lomas

17 Morley Gardens
Oakwood
Derby
DE21 4QQ

30th July 2014

Derby City Council
Neighbourhoods Directorate
The Council House
Corporation Street
Derby
DE1 2FS

Fao Graham Toon

**PROPOSED TREE PRESERVATION ORDER AT 119 COPES WAY,
CHADDESSEN, DERBY (TPO Number 582)**

Dear Sirs,

Further to your letter dated 30th July 2014, I wish to object to your proposal to make the Tree Preservation Order as described in your letter.

The tree is an ash and is about 15 metres in height and has multiple main stems some of which over-hang my property.

The tree is positioned to the west of my property and thus puts my property in shade during the afternoon and evening. In addition it blocks the light to the rooms at the rear of my house.

During autumn and winter months, the tree sheds copious amounts of foliage and seeds which block my gutters and drains which need clearing out on a regular basis. This causes me great difficulties as I have mobility problems and am awaiting a knee replacement operation.

There is a brook course which runs between my property and 119 Copes Way. The outfall of the surface water drains from Morley Gardens is into this brook and this also gets blocked by falling foliage and needs regular cleaning to maintain the water course.

We have wanted the complete removal of this tree for some time as the rate of growth is quite fast, and the tree now dominates the surrounding properties. We made enquiries on August 2nd last year to see if there was a TPO on this tree. We were informed by email from Graham Toon that there was no TPO and the owner of 119 Copes Way would not need permission to have the tree removed. We contacted the owners of 119 to see if the tree could be removed. The owners did not respond, but they have since left and the new owners now want to remove the tree. We have informed them of your reply

last year that there was no TPO and they have already made arrangements to remove the tree.

I trust that you will reconsider your proposals and permit the removal of this tree.

Should you wish to contact me urgently, my e-mail address is
, and my phone number is .

Yours faithfully,

(David Wood)

From.
Mr Robert Parkes
19, Morley Gardens,
Oakwood,
Derby. DE21 4QQ
30th July 2014

Derby City Council
Neighbourhoods Directorate
The Council House
Corporation Street
Derby ED1 2FS

To: Mr Graham Toon

Dear Sir,

I am writing to you in response to the letter I received regarding the proposed tree preservation order at 119, Copes Way, Chaddesden. TPO 582 refers.

I most strongly object to the idea of preserving this tree. It has become more of a nuisance to us as the years go by. We have lived here for almost 40 years now and can recall the view at the rear of our property long before the tree appeared.

- By nuisance I mean the increasing reduction in light at the rear of our house for one thing. The tree blocks out the afternoon sun from early afternoon onwards. The amount of growth apparent on the tree has increased greatly in the last few years thus cutting out more light.
- Also the tree is positioned to the south west of us. This means that if any damage to it occurs through storms etc. It is most likely to fall into mine or my neighbours gardens as the prevailing wind is from that direction.
- The tree is on the outer most boundary of 119, Copes Way. The degree of overhang means it is more of a nuisance to ourselves than them.
- We suffer greatly from blocked guttering after the leaves and large amount of ash seeds have fallen in the autumn. I have fitted filters into my guttering but even they become blocked and have to be removed and cleaned.
- At the bottom of our garden is the old course of the wood brook which has been kept open as a drainage course. In fact the surface water from Morley Gardens drains into this old brook course. The brook becomes more and more blocked by falling leaves and seeds etc from the tree
- Under the public open space at the bottom of our garden runs the main surface water and foul sewer from the Oakwood estate. I recall it being constructed in the early 1980's. I wonder if there is a danger to this construction from the roots of the tree.

- From what I can see from my property it will not be long before this ash tree is joined by others as there is a row of ash saplings growing along the fencing at the bottom of 117, Copes Way which must have come from seeds dropped by the tree in question.

The sad thing about all this is that we now suffer the legacy of a person who many years ago decided to plant a sapling in his garden. I don't suppose he thought at the time about how big it may grow and what problems it may cause to other parties. This happens more and more nowadays as greater varieties of trees become available more people start filling their gardens with them. Unfortunately they usually plant them at the edge of their boundary where they are more of a nuisance to others than themselves. It's a pity there isn't more control of who plants what and where in the first place but I can't see that ever happening.

When I heard the people at 119, Copes Way were having the tree removed I was well pleased and consequently would urge that this preservation order be removed.

Yours Faithfully.

Robert Parkes email:

Ms A Haviland and Mr G Richardson
119 Copes Way
Chaddesden
Derby DE21 4NS

25 August 2014

Director of Planning and Property Services
Derby City Council
Neighbourhoods Directorate
The Council House
Corporation Street
Derby DE1 2FS

For the attention of Mr Graham Toon, Senior Technician

Dear Mr Toon

Re: Tree Preservation Order at 119 Copes Way, Chaddesden, Derby (TPO 582)

Please accept this letter as written confirmation of our objections to the proposed Tree Preservation Order made on 29 July 2014 with regards to the Ash tree situated at the bottom of our garden.

This is an extremely large tree and we have been asked by various neighbours if we would consider either pruning it or taking the tree down. Branches extend over neighbouring properties and we have been advised by occupants of a property on Morley Gardens, which is at the bottom of our garden, that the tree is blocking their light and they have to deal with large amounts of foliage at various times of the year. We believe the owners of this property have already written to the Council with their objections to an order on the tree.

After consideration we had decided to have the tree taken down and arranged for this to take place. In the meantime we were then very surprised to hear that after checking with the Council that although there was no order on the tree at the present time they were now considering making an order on the Ash tree.

In addition to this, after speaking with residents on Morley Gardens they informed us they had enquired about the tree in August 2013 and been informed by yourself 'that the Ash tree located in the rear garden of 119 Copes Way is not protected by a Tree Preservation Order (TPO) and the property is not in a conservation area. Therefore, the owner would not need permission from us to carry out works to the tree'.

We find it inconceivable that in the space of under 12 months the situation has dramatically changed and the Council are now proposing to place an order on our tree. Your grounds for making the order state 'in the interests of visual public amenity. The tree is situated in a prominent position in relation to properties and open space on Seagrave Close. The tree contributes materially to the amenities of the locality by playing an important part in providing a sense of scale and maturity and forms a backdrop to the open space off Seagrave Close'.

With all due respect the 'public' do not have to maintain the safety of the tree or consider our neighbours objections. Yes there may be open space nearby but the tree itself is in our back garden and definitely in a built up area. Is it really up to private owners of a property to provide 'a sense of scale and maturity and form a backdrop to the open space on Seagrave Close'?

Because of its great size if it was to ever come down on its own accord it would cause a considerable amount of damage to a number of properties and gardens.

We respectfully ask you to reconsider your proposal and allow us to have the option to take the tree down.

We look forward to your reply.

Kind Regards

Amy Haviland

Gary Richardson

Amy Haviland can be contacted on

or emailed on

Appendix 4

Ash tree at 119 Copes Way
from Seagrave Close

Ash tree



Appendix 4

Ash tree at 119 Copes Way
from Seagrave Close

Ash tree

