

Trees Team
Southampton City Council
Civic Centre
Southampton
SO14 7LY

27 Highfield Crescent
Southampton
SO17 1SG

5th August 2024

Without prejudice

Dear [REDACTED]

Formal objection to the serving of statutory tree protection cited as The Southampton (27 Highfield Crescent) Tree Preservation Order 2024

I have been asked by my parents [REDACTED] the freehold owners of 27 Highfield Crescent, to object to the TPO on their behalf. I am a practising solicitor but for this purpose I am acting in my capacity as their daughter. I also hold lasting power of attorney for them both.

Summary of objections

- The trees are not suitable for a TPO under the Regulations and relevant government guidance and therefore the Council does not have lawful authority to confirm the TPO; and
- Confirmation of the TPO in this particular case would be a disproportionate interference with [REDACTED] human rights under Article 8 and Article 1 of Protocol 1 of the European Convention on Human Rights as incorporated into UK law by the Human Rights Act 1998. The Council could achieve its objective through less intrusive means.

Background

[REDACTED] moved into the property in November 1979 and it has been a much-loved family home. [REDACTED] The garden has become too much for them to manage as [REDACTED] physical capacity no longer matches his love for gardening. It is very overgrown, as shown by the photographs attached.

As the house is some metres below street level, access is via a sloping path between trees to one side of the property or by stone steps to the other. This can be seen on the aerial view from Google Maps attached. Both entrances can become hazardous in autumn and winter when leaves fall and become wet. I take care myself when using them in these conditions and they present an obvious risk to elderly people's safety. This is despite the path having been replaced relatively recently as it was slippery.

All this, combined with the size and condition of the house, means that [REDACTED] are looking to move [REDACTED]

[REDACTED] This would lift the burden of trying to maintain the property [REDACTED]

[REDACTED] introduced them to Charters Estate Agents who provided initial advice on selling the property. The serving of the TPO shortly afterwards resulted in Charters revising their opinion on value, saleability and the time likely it would take to secure a buyer. I attach a letter from them confirming this advice.

The arrival of the TPO was a shock and has significantly increased my parents' existing anxiety as their future is now much more uncertain and less secure.

Legal basis

Under the TCPA s198, the Council has discretionary power to make a TPO 'if it appears... that it is expedient in the interests of amenity to make provision for the preservation of trees'. 'Amenity' is not defined in the legislation.

However, the relevant Government guidance says the following in relation to amenity (emphasis added):

*'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. Before authorities make or confirm an Order they should be able to show that protection would bring **a reasonable degree of public benefit** in the present or future.'*¹

This shows that TPOs are to be made with due care and consideration as to the value of the particular trees in their context, and not as a default position for particular types of tree.

According to government guidance, objections and representations to TPOs can be made on any grounds². Under Reg 7 of the TPO Regulations 2012, the Council must consider these objections and representations before deciding whether to confirm the TPO. Under general public law, the balance of proof is on the Council to justify making the TPO and not for objectors to prove that it should not be made.

In reaching a decision, the Council must comply with the Human Rights Act 1998 where appropriate. I believe that [REDACTED] rights are engaged under the following articles:

Article 8

¹ [Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/274243/Tree_Preservation_Orders_and_trees_in_conservation_areas_-_GOV.UK_(www.gov.uk).pdf) Paragraph: 007
Reference ID: 36-007-20140306

² [Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/274243/Tree_Preservation_Orders_and_trees_in_conservation_areas_-_GOV.UK_(www.gov.uk).pdf)

Everyone has the right to respect for his private and family life, his home and his correspondence.

Article 1 of Protocol 1

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

Both these rights are qualified, and if engaged, there must be a legitimate policy aim, and the Council must conduct a proportionality test to determine if the interference with the rights is justified based on the individual circumstances of the case.

The wording of the qualifications to each article is different, but in broad terms the test is similar – does the policy aim justify the interference with the right, and is there a way of achieving the aim with less interference?

For the purposes of this letter, it is accepted that;

- the TPO Regulations pursue a legitimate public interest aim – namely the preservation of trees which contribute to public amenity, and
- In most cases, any interference with a person’s rights is likely to be sufficiently mitigated by the scheme under the TPO Regulations for applying to do works to a protected tree, and the potential for compensation should harm be caused by refusal of such an application.

However, [REDACTED] circumstances are not mitigated by that scheme, as I will explain in more detail later.

Objection 1 - The suitability of the trees for a TPO

The Council has received separately an expert report by [REDACTED] of Technical Arboriculture Ltd, who has assessed the trees in context at the site. On this point, I defer to his professional judgment, qualifications and experience as a former council tree officer.

I will just pull out a few points from his report:

*‘T1 is a poor malformed specimen likely to conflict with the highway.
T2 is set back inside the property land holding by 32 metres but also down a significant slope.
As a result only a very small degree of public benefit can be proven.
My assessment, based on the use of TEMPO, concludes that the merits of the trees are unconvincing in terms of suitability for a TPO’*

I add the following comments for the Council’s information:

- Mr [REDACTED] refers to T1 being subjected to regular pruning to maintain it at a smaller size, resulting in a densely packed crown, and states that it would need work to comply with the Highways Act. T1 has been pruned in [REDACTED] ownership, largely due to concerns about it overhanging the pavement and the highway – an issue of concern to any householder. The need for this pruning for safety reasons over time would seem to have contributed to its poor form and unsuitability for a TPO.
- Mr [REDACTED] also refers to the limited visibility of T2, and government guidance states that there should be a ‘significant negative impact on the public or the local environment’ if the tree were to be removed. In addition to T2 not being visible save for partial views from specific points, it is also viewed against a background of other trees. This means that it is not reasonable to consider that any negative impact would be ‘significant’. The general verdancy of the area would not be impacted in a meaningful way.

In summary, my understanding based on the law and Mr [REDACTED] report is that:

1. T1 does not justify the confirmation of a TPO as the only criterion that it meets is that it is publicly visible. The government guidance is clear that ‘Public visibility alone will not be sufficient to warrant an Order’³ and the tree scores poorly on the other relevant characteristics cited in the guidance – size and form, future potential as an amenity, rarity cultural or historical value; contribution to, and relationship with the landscape⁴.
2. T2 does not justify the confirmation of a TPO, as it has little public visibility and, in its context, there would not be the required ‘significant negative impact’ were it to be removed. Given this, it is very questionable whether ‘a reasonable level’ of public benefit accrues to justify a TPO.
3. There is no evidence to support expediency in this case. [REDACTED] have been good stewards of not only these trees but many others, together with shrubs and other plants. There is no deal in place with any buyer or any indication that a buyer would harm the trees.
4. The Council can only confirm an order where it is satisfied that it is justified in doing so.

It seems therefore that the case for the TPO has not been adequately substantiated.

Objection 2 – Disproportionate interference with [REDACTED] human rights

If I am wrong on the above and the Council decides the trees are suitable, it must then apply the proportionality test in relation to the human rights issues. In doing so, it must consider the actual impact of its decision on [REDACTED]

³ [Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas) Paragraph: 008

Reference ID: 36-008-20140306

⁴ *ibid*

This impact is unusually significant given their age, health and circumstances for the following reasons:

1. The normal mitigating factor of being able to apply to the Council to carry out works to the trees is not relevant. The harm is caused by the significantly increased timetable for a potential sale in the context of two elderly people trying to find a safe and manageable home [REDACTED] are [REDACTED] unable to cope with the property. This is not a situation that will improve.
2. The serving of the TPO has created high anxiety and uncertainty about their future, [REDACTED]
3. While new owners could of course apply to carry out works, it is the mere fact of the TPO that has a dampening effect on the market for the property (as evidenced by the significantly decreased valuation as well as the lengthened sale process). This is particularly relevant because [REDACTED] want to sell now, not at an unknown time in the future.
4. There is no merit in suggesting that prospective buyers should act differently to how they actually do, as it has no bearing on the reality of this situation.

I consider that [REDACTED] Article 8 rights to respect for their private life, family and home is engaged because:

1. The mere existence of the TPO is likely to prevent them from moving, as planned, from unsuitable and unmanageable accommodation into a more appropriate home in a timely manner [REDACTED]
2. The TPO has caused material mental stress and uncertainty to both [REDACTED] and therefore interfered with their psychological integrity;
3. Their ability to sell their home and make suitable choices for their own welfare has been limited, and this interferes with their personal autonomy; and
4. There is no provision for compensation of any kind for this interference. Monetary compensation would not in any event be sufficient in this case.

I consider that Article 1 of Protocol 1 is relevant for the same reasons. Their right to peaceful enjoyment of their property is being limited.

On the basis that their rights are engaged, proportionality must be considered. As it is accepted that a TPO in general has a legitimate aim, the key issues are whether less intrusive measures are available to the Council, and whether a TPO is proportionate in [REDACTED] case.

Less intrusive measures

As [REDACTED] states in his report, there is no evidence of an immediate threat to the trees. He considers that no adverse tree works or other circumstances suggest that

there is the 'expediency' required for a TPO. It would be precautionary at best and could be regarded as speculative.

██████████ garden has been one of their great pleasures in life, and they have neither the intention or desire to cause harm to the trees. Nor is there any reason to suggest that the trees would be harmed by any future owner.

If any development were to be proposed on the property (and I believe the scope is limited due to the sloping nature of the site), it would be subject to the planning process. This would include requirements for biodiversity net gain, a tree survey and appropriate treatment of the trees through conditions.

This would, in this case, seem to be both appropriate and remove the interference with ██████████ rights.

Proportionality

I consider that the key elements are:

- The level of suitability of the trees for a TPO. Even if the Council does not fully accept the argument that they do not qualify, they would appear to be borderline at best; and
- The impact on ██████████ in their particular circumstances is causing significant harm which it is not realistically possible to mitigate through the TPO process.

In relation to Article 8, the Council must be able to show that the interference with their rights is 'necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.' This is a high bar which I suggest is not met in this case.

In relation to Article 1 of Protocol 1, the Council must be able to show that the interference is 'necessary to control the use of property in accordance with the general interest'. Again, this does not seem to be met in the light of a less intrusive measure being available.

Discussions with the Council

As I live and work in west Dorset and have only just started a new full time job, I have not been able to contact the Tree Officer to discuss the TPO. He would have been unaware of the wider circumstances at the time of his site visit, and may not have had the time to conduct a survey to the extent that Mr ██████████ did.

I would be happy to discuss these objections further. I do however request that contact is initially made through me as my parents' attorney and not to them direct. This is their wish.

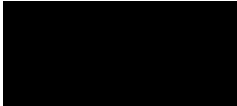
I can of course travel to Southampton for site visits.

Conclusion

I am sure the Council will understand that this has been a difficult letter to write but I am keen to ensure that my parents' situation is understood fully and that they are adequately represented.

I respectfully request that the Council decides not to confirm the TPO.

Yours sincerely



Note

We appreciate that transparency is important to the Council and to this process. Nevertheless, please note that the information on [REDACTED] is special category data and must be protected as such under the UKGDPR. It must not be disclosed.

Please also do not disclose the valuation figures in the letter from Charters Estate Agents, as this is also personal data. Making it public could hinder my parents' ability to negotiate any future sale price.

Google Maps aerial view of access



Pictures of garden



[REDACTED]
27 Highfield Crescent
Southampton
Hants
SO17 1SG

29th July 2024

Dear [REDACTED]

RE: Possible Tree Preservation orders at 27 Highfield Cres Southampton Hants

I first invited your home in June 2024 to provide you with an opinion of the value of your home.

We discussed many factors that affect the values of each home that we inspect. These factors included the current size and condition of your home, the size of the garden, parking arrangements, its location and the potential that each property has to be improved/extended.

Negative factors also need to be considered such as the topography of your plot, and the impact from surrounding properties and trees.

I am of the opinion that any protected trees at your property will affect both the saleability and the likely achievable market value due to the ongoing financial liability for future maintenance.

They can also affect the potential for extensions & alterations that have further implications as to how potential buyers will judge the property.

Our initial suggested Asking Price for your home was [REDACTED] and we would expect to secure a proceedable purchaser within close proximity to this figure and within a 12-week period. However, I would suggest that your property's value could be negatively affected by figures in the region of [REDACTED] due to the presence of these two large trees. I would also suggest that the impact of these potential TPO's will significantly increase the time that it will take to find a suitable purchaser.

I must stress that this is my opinion and this is backed by in excess of 30 years experience of working in the Southampton Housing Market.

[REDACTED]
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