

TREES TEAM

Southampton City Council
City Services
Resident Services Directorate
Southampton City Council
SO14 7LY



Direct dial: 023 8083 3005

Our Ref: T2-800

Email: [REDACTED]

19th September 2024

Please ask for: [REDACTED]

Dear [REDACTED]

Town and Country Planning Act 1990
Town And Country Planning (Trees) Regulations 2012
The Southampton (27 Highfield Crescent) Tree Preservation Order 2024

Assessment of the trees and reasons for doing so

The tree suitability assessment was initiated by an enquiry received from a member of the public, with a request to formally protect three individual trees on the site, two Oaks at the front of the property and a single Oak in the rear garden. A request from a member of the public may be considered as a valid reason to assess trees and if suitable, to protect them in a precautionary manner. The request gave the following comments: *‘These trees form part of both a wildlife corridor for birds moving from the green valley between Highfield Crescent and Highfield Lane and are a natural break in an otherwise sparsely green street for pedestrians traversing from Portswood to the University via Highfield Crescent. The trees have all been exceptionally well maintained by the landowners over a period of more than 30 years and are a landmark feature of the road.’*

An assessment of the trees was completed on 2nd July 2024 and the TEMPO form for this can be seen at Appendix 1 of this document. At the same time as assessing the trees for suitability, I knocked at the door and was able to have a conversation with [REDACTED] regarding a possible TPO being applied. We spoke about the trees and garden in general, and he told me that he thought he would not be residing at the address much longer and the house would likely be sold. We don’t often consult with residents whilst making an initial assessment of sites and trees, as it unfortunately can allow a period, until the TPO becomes active where the trees are not protected and can lead to them being felled or pruned to an extent where they are no longer suitable. I must emphasise that I did not feel that this was a real possibility in this case as my initial thoughts were that the trees were under good management and felt comfortable giving some indication of my intentions. [REDACTED]

[REDACTED] Nonetheless the information that [REDACTED] shared with me, about selling the property, was integral in my final decision to place a TPO on two of the trees.

I appreciate that your parents had no intention to remove trees and that their stewardship of the trees has been as responsible owners. However, this is no guarantee to the long-term retention of trees should the house and land be sold.

Following my assessment, two of the trees were deemed suitable and the TPO was made and served, on 9th July 2024.

The letter you have provided from Charters suggests the opinion that the value could be negatively affected due to the presence of the two trees and that sale timescales may be affected by the TPO. This may suggest that if the trees were not there, it could improve the value, which in turn may be considered to increase the perceived threat to the trees. Though it can be accepted that some purchasers may look upon large, protected trees as a negative, there are also studies that show that areas with higher tree cover show an increase in property value and may be viewed as a positive feature.

Considering my assessment of the trees, my conversation with [REDACTED], and further supported by information that you have supplied, my scoring on the Expediency section of the TEMPO form is that the trees are under a 'perceived threat' rather than precautionary as suggested in the tree report. My full response to the report and other points raised in your objection are included below.

1. Response to tree report and the trees suitability for protection.

In response to the formal objection received to '*The Southampton (27 Highfield Crescent) Tree Preservation Order 2024*', I have examined the points raised in the associated tree report, referred to the relevant legislation, guidance and documents listed, and can offer the following assessment.

1. Amenity Assessment of T1 and T2

The report questions the amenity value of both trees, arguing that:

- T1 is of fair condition and has poor form.
- T2 is of fair condition, has limited public visibility and is located far from the road.

a) Public Visibility and Amenity Value

Government Guidance and Planning Practice Guidance (PPG) state that TPOs should be applied when the removal of trees would have a "significant negative impact on the local environment" and that trees must offer a "reasonable degree of public benefit." While visibility is an important component, it is not the sole determinant of whether a TPO is justified.

- Public visibility of T1: Despite the noted imperfections in T1's form and structure, it is still prominent from Highfield Crescent, and as such, provides public amenity value in terms of its contribution to the landscape, streetscape, and local character.
- Public visibility of T2: T2's visibility is somewhat limited from the front of the property, in part due to the dwelling and the overgrown nature of the garden. On Highfield Crescent, from the East and the West, this is greatly increased and T2 can be viewed as a prominent feature against the skyline. The front boundary of the property is made up from a hedgerow, which is somewhat overgrown and includes two other Oak trees that have been previously pruned to form pollards. These two other Oak were assessed as part of the TPO assessment but were subsequently not included. It would be reasonable to assume that the hedge row and the pollards will be pruned again in due course and in doing so this will increase the future visual amenity of T2. Additionally, under PPG, visibility does not need to be uniform from all angles. Even partial visibility from significant vantage points (e.g., from Highfield Crescent) can justify TPO protection if the tree contributes to local amenity or environment.

TEMPO Guidance (Tree Evaluation Method for Preservation Orders) also supports the assessment of visibility, but it emphasizes the tree's form, condition, and other factors. TEMPO points out that “trees of poor form or generally unsuitable for their location” should have deductions, but the assessment of T1’s form is subjective. While T1’s form is not ideal, it remains a substantial tree that benefits the street scene. The Officers own assessment using TEMPO shows the subjective nature of these assessments and offers a differing view. (See attached TEMPO forms and photos)

b) Condition and Retention Span of T1 and T2

The report acknowledges that T1 is categorized as "FAIR" under TEMPO and raises concerns about its pruning history and potential obstruction under the Highways Act. However, BS 5837:2012 (Trees in Relation to Design, Demolition, and Construction) emphasizes that a fair condition does not inherently negate the tree’s long-term contribution to the environment. Ongoing management, such as crown lifting or pruning for highway clearance, can mitigate these issues without the need for removal and may be considered as standard tree maintenance in an urban setting.

- T1 Retention Span: The assessment provides a retention span of 20-40 years, suggesting that the tree can continue to provide public benefit, albeit with management intervention. This aligns with TPO requirements, as even fair trees with moderate life expectancy may warrant protection if they contribute to the local environment.

For T2, the condition is also described as fair, and the suggested retention span of 40-100 years confirms that this tree can provide long-term benefits. Its proximity to the dwelling may necessitate some management, but this can be addressed under BS 5837, which governs tree management in proximity to development.

c) Other Factors – Cultural and Historic Importance

The report does not ascribe any cultural, historic, or commemorative importance to the trees, which TEMPO would otherwise consider as "other factors" that could elevate the score. However, the lack of these elements does not diminish the basic requirement for trees that positively contribute to the local landscape and environment, especially in a residential setting like Highfield Crescent.

2. Expediency of the TPO

The tree report argues that there is no immediate or foreseeable threat to the trees, citing a lack of planning applications or imminent changes to the land. However, expediency under TPO regulations is not solely based on immediate threats; it also considers the likelihood of future changes that could jeopardize the tree’s integrity. Given the pressures of urban development and confirmation that the property is being considered for sale, the local authority considers their concerns regarding future risks is valid.

Assessment of T1 and T2 Using TEMPO

The report uses the assessment method, specifically suggesting that both trees may fall short of the minimum score required to merit protection.

However, TEMPO is intended to be flexible, with a scoring system that integrates public visibility, condition, and other factors. Based on the provided assessment:

- T1 is visible from the road, has a fair condition, and contributes to the streetscape. Its form and need for management are not disqualifying but are factored into the retention span and condition scores. The retention span of 20-40 years aligns with moderate-term tree protection goals.
- T2 is less visible but still provides ecological and environmental value, particularly in a residential area and there is potential for future visual amenity if other vegetation within the property were to be pruned or removed or should the site be developed. While proximity to the dwelling may require future management, it does not invalidate the protection, especially given the 40-100 year lifespan.

Conclusion

In conclusion, the submitted tree report and associated assessment of T1 and T2 is not considered compelling grounds for dismissing the TPO. The key points in the objection—amenity value, public visibility, tree condition, and expediency—are addressed within the frameworks of Planning Practice Guidance, TEMPO, and BS 5837. Both trees, despite their imperfections, contribute positively to the local landscape and environment, warranting their protection under the TPO.

I am satisfied, based on the available evidence, that the trees are suitable for protection and that confirming the TPO is justified.

2. That the Council could achieve its objective through less intrusive measures.

A decision not to protect these trees would mean that future owners may choose to remove trees and there would be no mechanism in place to prevent their loss. I accept that tree protection may be conditioned if planning consent were to be sought but this would not stop trees being removed prior to an application being submitted. I accept that trees (even those removed) would form part of a future Biodiversity Net Gain assessment, but this would only secure a need to replace the biodiversity and may be carried out off site via contributions, or on site via other means. This would not secure the amenity value that these trees offer now. The only route available at this stage, to ensuring legal protection of trees, is via formal protection under a TPO.

I am satisfied that we have demonstrated this perceived threat to the future of the trees and that this, in turn, demonstrates expediency in making and confirming the TPO.

3. Disproportionate interference to Human rights act 1998

Article 8: Right to Private and Family Life

Article 8 of the *Human Rights Act 1998* guarantees an individual's right to respect for their private and family life, home, and correspondence. However, this right is qualified, meaning it can be lawfully interfered with if the interference is:

1. In accordance with the law—A TPO is a statutory measure backed by the *Town and Country Planning Act 1990* and related regulations.
2. Necessary in a democratic society—TPOs serve several legitimate aims, including the protection of the environment, community wellbeing, and public amenities. Trees often

contribute to air quality, reduce flood risks, and enhance mental well-being, all of which are critical public concerns.

3. Proportionate—The imposition of a TPO does not prevent all tree work but ensures that necessary tree management is undertaken responsibly and only with proper consent. This ensures that the public and private interests are balanced. Owners can still apply for permission to carry out works if it is justified, for instance, if a tree poses a safety risk or impacts their property rights excessively.

Therefore, while a TPO may affect the use of private property, it does so for the greater good, addressing legitimate concerns like environmental protection and urban health.

Article 1 of Protocol 1: Right to Property

Article 1 of Protocol 1 protects an individual's peaceful enjoyment of their possessions, which includes land and trees. However, like Article 8, this right is not absolute. Public authorities can interfere with property rights if it is:

1. In the public interest—TPOs are established in the public interest to preserve trees that offer significant ecological, aesthetic, and environmental benefits. Trees contribute to public health and well-being, particularly in urban areas, by improving air quality and biodiversity. Additionally, mature trees can increase property values and enhance the character of neighbourhoods.
2. Subject to law and conditions of control—A TPO is created under legal procedures that allow for due process, including the opportunity to object. The decision to make a TPO involves considering the condition, location, and value of trees, following the Tree Evaluation Method for Preservation Orders (TEMPO) and relevant planning practices. The affected party has the right to challenge the order, and an independent planning committee makes the final decision.
3. Proportionate to the aim pursued—While TPOs restrict certain actions (such as cutting down or pruning a tree without consent), they do not amount to a total loss of property rights. Property owners can still apply for consent to perform works that are necessary for health and safety or property maintenance. This ensures that the restriction is proportionate to the legitimate aim of protecting the environment and the public interest.

Conclusion

In consideration of a new TPO, the environmental benefits that trees provide to the community must be emphasized, as well as the qualifications on property rights and privacy under the *Human Rights Act*. TPOs are implemented to protect public interests, and any potential limitations on individual rights are both lawful and proportionate, aimed at preserving valuable environmental assets and ensuring sustainable development for current and future generations. As long as the TPO follows legal procedures and provides opportunities for affected parties to object or apply for necessary works, it does not infringe disproportionately on property rights under Article 1 or privacy rights under Article 8.

Specifically referencing this to the two Articles mentioned:

In relation to Article 8 the interference can be justified as it is 'for the protection of the rights and freedoms of others' to enjoy the benefits provided by these trees, both visually and environmentally.

In relation to Article 1 of Protocol 1, it is justified in the public interest that the trees amenity value is preserved.

I am satisfied, based on the available evidence, that the TPO does not disproportionately interfere with the rights of the landowners, under the Human Rights Act 1998.

Yours Sincerely

[REDACTED]

[REDACTED]

Southampton City Council

Appendix 1

Tree officer TEMPO assessments



**TREE EVALUATION METHOD FOR PRESERVATION ORDERS (TEMPO):
SURVEY DATA SHEET & DECISION GUIDE**

Date: 02.07.24	Surveyor: [REDACTED]
Tree details	
TPO Ref: T2- NA	Tree/Group No: Species: T1 - Oak
Owner (if known): Linkdown	Location: Front boundary of 27 Highfield Crescent, SO17 1SG
The Southampton (L) Tree Preservation Order 2023	

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition & suitability for TPO:

Refer to Guidance Note for definitions

- | | |
|---------------------|-------------------------|
| 5) Good | Highly suitable |
| 3) Fair | Suitable |
| 1) Poor | Unlikely to be suitable |
| 0) Dead | Unsuitable |
| 0) Dying/dangerous* | Unsuitable |

Score & Notes = Bifurcates at 2m. Historic reduction works, typical regrowth pattern. No sig. defects observed. – potential remedial works to lift over highway (minimal) - 3

* Relates to existing condition and is intended to apply to severe (irremediable effects) only.

b) Remaining longevity (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 |

Score & Notes = 2 – Assuming 'good practice' management.

*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 | Just 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 – Prominent to street

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 habit 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 – Past reduction work and position factored into retention score above.

Part 2: Expediency assessment

Trees must have accrued 10 or more points to qualify:

- | |
|----------------------------------------------|
| 5) Immediate threat to tree inc. s211 Notice |
| 3) Foreseeable threat to tree |
| 2) Perceived threat to tree |
| 1) Precautionary only. |

Score & Notes = 2 – Land ownership

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:

12

**Decision:
TPO**



**TREE EVALUATION METHOD FOR PRESERVATION ORDERS (TEMPO):
SURVEY DATA SHEET & DECISION GUIDE**

Date: 02.07.24	Surveyor: [REDACTED]
Tree details	
TPO Ref: T2- NA	Tree/Group No: Species: T2 - Oak
Owner (if known): <u>Unknown</u>	Location: Front boundary of 27 Highfield Crescent, SO17 1SG
The Southampton Tree Preservation Order 2023	

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition & suitability for TPO:

Refer to Guidance Note for definitions

- | | |
|---------------------|-------------------------|
| 5) Good | Highly suitable |
| 3) Fair | Suitable |
| 1) Poor | Unlikely to be suitable |
| 0) Dead | Unsuitable |
| 0) Dying/dangerous* | Unsuitable |

Score & Notes = 5 – Tree appears in good health with no indication of pest, disease or defects. Suitably located in garden with no apparent indication of negatively impacting property.

* Relates to existing condition and is intended to apply to severe (irremediable) effects only.

b) Remaining longevity (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 |

Score & Notes = 4 – Remedial work possibly required to prevent encroachment to roof, standard maintenance.

* 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 | Just 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 = 3 – Future visibility may increase if overgrown veg were pruned or land developed.

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 habit 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. s211 Notice |
| 3) Foreseeable threat to tree |
| 2) Perceived threat to tree |
| 1) Precautionary only. |

Score & Notes = 2 – Land ownership

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:

15

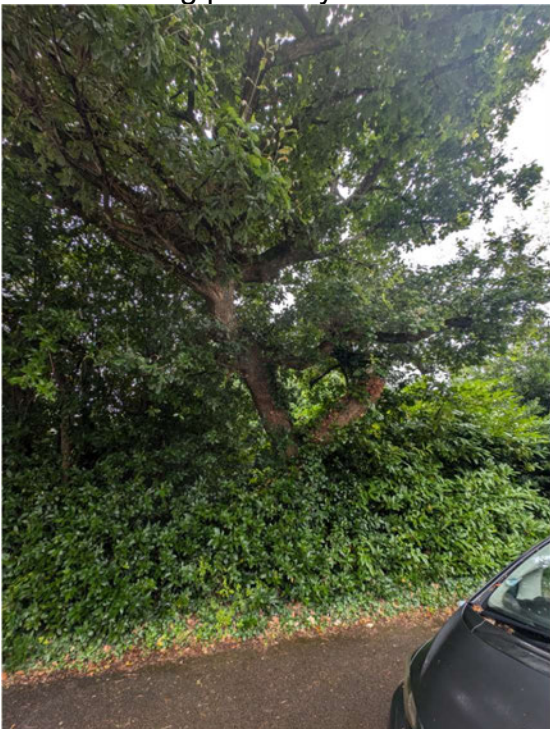
**Decision:
TPO**

Appendix 2 – Photos

T1 and T2 viewed from the East on Highfield Crescent



T1 – Showing proximity to road and form of the tree



T1 and T2, viewed from the West on Highfield Crescent



T1 and T2, viewed from the North on Highfield Crescent

