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<b>APPLICATION NO.</b>	TPO.TVBC.1223
<b>SUBJECT TYPE</b>	Tree Preservation Order
<b>SITE</b>	69 -72 Riverside Gardens, Romsey, Hampshire, SO51 8HN
<b>ORDER MADE</b>	8 <sup>th</sup> January 2021
<b>CASE OFFICER</b>	Rory Gogan

Background paper (Local Government Act 1972 Section 100D)

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## 1.0 INTRODUCTION

- 1.1 This matter is reported to the Southern Area Planning Committee to consider objections received in respect to the making of a new Tree Preservation Order (TPO) and decide whether the TPO should be confirmed.
- 1.2 This TPO was made in response to the receipt of a Section 211 Notice of intent to undertake works to trees in a Conservation Area received and validated 30th November 2020.
- 1.3 Description of works proposed within the Section 211 Notice: To fell one Sycamore (standing within the Conservation Area).
- 1.4 A provisional Tree Preservation Order (TPO.TVBC.1223) was made in response to that notice. The Order has effect provisionally unless and until it is confirmed. Confirmation must take place no later than six months after the TPO was made.
- 1.5 The Council cannot confirm a TPO unless it first considers objections and representations duly made and not withdrawn. If a TPO is confirmed, it may be confirmed with or without modifications.

## 2.0 SITE LOCATION AND DESCRIPTION

- 2.1 The tree subject to this report stands to the front of 69 – 72 Riverside Gardens, on land adjacent to the north west boundary of 72 Riverside Gardens, within the Romsey Conservation Area.
- 2.2 **Tree Description**
  - Species - Sycamore *Acer pseudoplatanus*
  - Age – Mature estimated to be approximately 60 years of age.
  - Trunk Diameter - Single trunk that measures 910mm diameter at 0.8m above ground level. The trunk divides at 1.5m above ground level into two co-dominant leading stems, the easterly stem measuring 550mm diameter and the westerly stem measuring 640mm diameter.
  - Height – top of tree above ground level – 16.5m

- Crown Height above ground level - historically been crown raised to approximately 5m on its south easterly side above the designated car parking area to the front of 69 – 72 Riverside Gardens. The pruning wound has now completely occluded.
- Crown structure – co-dominant branches sub-divide at approximately 2.8m above ground level to form a full crown. The crown is fully furnished all over.
- History - crown raised to approximately 5m on its south easterly side above the designated car parking area to the front of 69 – 72 Riverside Gardens. The pruning wound has now completely occluded.
- Slower growth - branch extension growth was noted as being minimal, the tree has reached a maturity.
- Tar Spot - leaves are showing signs of infection by a foliar pathogen Tar spot *Rhytisma acerinum*.
- Lichens, moss – recorded on trunk

### 3.0 **Background**

3.1 The subject tree (T1) originally stood with two other mature Sycamore trees that grew to the west, at the end of the gardens of 159 and 157 Middlebridge Street. The gardens historically extended from the rear of the Middlebridge Street houses up to the southern edge of the Riverside Gardens access road. These two trees were covered by a TPO made in July 1974 and were subsequently felled when this part of Riverside Gardens was developed as part of the planning permission to build three dwellings on land to the rear of numbers 149 – 159 Middlebridge Street reference TVS.01022/4. The subject tree is now the only remaining tree within Riverside Gardens that has any maturity or stature.

### 4.0 **REPRESENTATIONS**

4.1 **Objections** to the making of the TPO have been received from three residents of Riverside Gardens on grounds as set out below.

1. The water supply pipes serving the flats 69-72 Riverside Gardens are situated close to the tree; four inbound water pipes are sitting approximately 1.5m from the trunk, concern raised that they will sustain damage as the tree roots grow.
2. The kitchen and living room at 70 Riverside Gardens face the front of the building and when the tree is in leaf these rooms suffer from a lack of light.
3. The tree produces a large quantity of leaves every year and when they fall they are a safety hazard to the public using the public footpath. Time and effort to clear away from parking area.
4. The tree is not in good health. It is covered in lichens. A black sooty residue is present on the south side of the trunk. Sooty mould is actually a fungus that grows with heavy aphid, scale or whitefly damage. Trees leaves and trunk are diseased.
5. Honeydew and bird droppings are damaging cars parked both on the highway and within the defined parking spaces at 69-72 Riverside Gardens.
6. When in leaf the tree obliterates the view from properties.

7. Tree roots are damaging the surface water drains serving 69-72 Riverside Gardens. Tree roots (both mature and fibrous) that grew into the drainage system could not have been prevented by regular maintenance.
8. The council should assess the amenity value of trees consistently.
9. All planning applications to fell other trees on the estate have been granted, and together these applications have resulted in the felling of at least 16 trees, including the two large sycamores.
10. Risk of major property damage to the 5 properties within 8 metres of the tree in a severe storm.
11. The tree's roots and debris prevent Hampshire County Council carrying out its Duty of Care as laid down in the Highways Act 1980 to maintain pavements.
12. The area of pavement directly under the tree is frequently dangerous for elderly people and wheelchair users. According to Inclusive Mobility 2000 a pavement should be 200cm wide to facilitate two wheelchairs passing. A bare minimum width should be 150mm. With current root ingress this is not achievable.
13. Failing to act consistently in administering tree protection on the Riverside Gardens Estate.
14. Protecting a tree with a low amenity value.
15. Imposing problems, costs and dangers for the tree's neighbours.
16. The tree does not enhance the appearance of the area and does not appear to attract wildlife.
17. The effect of the tree on personal rights to the full use and peaceful enjoyment of property.
18. A number of large branches have fallen from the tree on to cars. No damage caused and no images were taken.
19. No evidence has been provided to substantiate supporters statement that the felling of this particular tree would contribute to climate change

4.2 **Support** for the making of the TPO have been received from forty four people including residents of Riverside Gardens and members of the public on grounds shown in paragraph 4.3 below.

4.3 **Romsey and District Society** – have submitted representation in support of the tree preservation order bring made permanent. Their comments have been included within bullet points shown below:

1. The tree is a mature, healthy specimen that is visually prominent in the street scene and is one of the last mature trees still standing within Riverside Gardens.
2. The tree is a significant and rare amenity in a heavily developed area and is visible from Riverside Gardens, Memorial Park, The Causeway and houses in Middlebridge Street.
3. The tree has benefits for the mental wellbeing of the residents of Riverside Gardens particularly in times of isolation and home working.
4. No technical justification, professional, accredited arboricultural report, structural engineers report or building surveyor report have been provide by the Tree Removal Group to give evidence of poor tree condition, structural subsidence or surface drain blockage.

5. The Sycamore is a naturalised tree species that has been present in the Britain for many centuries (thought to have been introduced by the Romans).
6. Tree is part of a green corridor and felling would reduce species richness and diversity of habitat.
7. The tree is a vital habitat and food resource (nectar, pollen and honeydew) for birds, bats, small mammals, bees, moths, aphids, ladybirds and caterpillars.
8. The tree is important in Climate Change mitigation particularly in light of Test Valley Borough Councils declaration of a Climate Emergency it must be a priority to ensure the survival of all healthy, established trees.
9. Tree combats the effect of air pollution, is a carbon store, aids water filtration, regulates water flow and recycles nutrients.
10. The pavement width and surface is seen by many of the supporter of the trees retention as sufficient to allow safe passage for wheel chairs, buggies and mobility scooters. Any repairs are seen as minor to remove any rise in the pavement levels close to the tree.
11. Hampshire County Council have provided information to one supporter via a Freedom of Information request that shows that the HCC system has received three enquires regarding the pavement fronting 69/72 Riverside Gardens . One of these three enquires relate to all pavements in Riverside Gardens dating back to 2015. HCC have not received any claims for personal injury.
12. It was noted by one resident/supporter of the TPO that the drains have not been cleared/cleaned by the landlord for thirty years and that the recent drain blockage could have been prevented with regular cleaning/maintenance of the drain.
13. The tree was present when the 69 – 72 and 75 Riverside Gardens were built. The tree would have been considered at the planning stage and must have been considered suitable to be retained. The present occupiers of 69 – 72 Riverside Gardens were aware of the tree before taking up residence.
14. A full wildlife survey should be undertaken before any works are undertaken.
15. The tree should be considered as a specimen or champion tree.

## 5.0 **POLICY AND NATIONAL GUIDANCE TOWN AND COUNTRY PLANNING ACT 1990**

In determining a response to a Conservation Area notification of intent to work on a tree the options are:

- to make a Tree Preservation Order
- decide not to make a TPO and issue a decision of “no objection”
- decide not to make an Order and allow the 6-week notice period to end, after which the proposed work may be done within 2 years of the date of the notice.

When deciding to make a TPO local authorities must pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

## 6.0 TPO CONSIDERATIONS

- 6.1 In determining notifications of intent to fell or prune trees in a Conservation Area, the Local Authority must act in the interests of preserving or enhancing the character or appearance of the Conservation Area. Trees play an important role in both the appearance and the character of Conservation Areas, and this places the presumption in favour of retaining trees where they are of public amenity value.
- 6.2 In assessing trees for possible inclusion in a new TPO, the Council therefore assesses whether the tree has public amenity value. Before doing so, however, it will first determine, by reference to a list of detractors, whether the making of a new order would be defensible.
- 6.3 In this instance the Sycamore tree was noted to be of a fair shape and form and that it appears to be outwardly sound and stable having sufficient space for reasonable growth with the potential for a long useful life expectancy.
- 6.4 The tree can be seen from public vantage points internal to Riverside Gardens and from the surrounding area including Middlebridge Street and as a backdrop to houses from the adjacent Memorial Park.
- 6.5 There are other trees nearby, including Silver Birch a small corkscrew Willow, Cherry, Hawthorn and Norway maple.
- 6.6 Many mature trees have been lost from this part of Romsey since this area to the rear of properties in Middlebridge Street, principally because of new building development or they were found to be dangerous, defective or a direct threat to public safety. Other local tree losses are predictable (surrounding Ash as a result of Ash Dieback for example) in the short term due to their condition or location. The loss of these trees places a greater emphasis on the amenity and importance of this tree within this street setting. The impact of the works proposed under the Conservation Area notification 20/03009/TREES would result in the loss of one of the last mature broadleaved trees within the Riverside Gardens development and would greatly impact to the detriment of public amenity, and the character and appearance of the Conservation Area in this location.

## 7.0 IMPACT TO INDIVIDUAL PROPERTIES

### 69 – 72 Riverside Gardens

- 7.1 The tree stands on the north western boundary of 69 – 72 Riverside Gardens. The canopy of the tree extends above the parking area to the front of the properties. The canopy edge is approximately 5m from the front of 71 Riverside Gardens.
- 7.2 The tree will shed large quantities of leaf and seed into the car parking area. The car parking area is an open area such as would allow for ease of maintenance.

7.3 The tree will impact upon these properties, but not, it is considered, to a degree greater than that regularly encountered around street trees within Romsey and the Borough as a whole.

#### **75 Riverside Gardens**

7.4 The tree stands 8.7m distance from the centre of the tree's trunk to the north west corner of 75 Riverside Gardens. The canopy edge does not extend above the boundary fence that is 5.8m distance from the centre of the tree.

7.5 The tree will shed large quantities of leaf and seed into the front garden and parking layby adjacent to Riverside Gardens access road. The occupiers are keen gardeners and the need for leaf clearance, seedling removal will be an ongoing chore.

7.6 To these extents the tree will have an adverse effect on the use and enjoyment of the front garden of 75 Riverside Gardens. However, it is considered that the degree of this impact is no worse than frequently encountered across the borough and in this instance does not outweigh the amenity value of the tree.

7.7 Properties numbered above also benefit from the rear gardens and amenity space to the south east, that side of the buildings facing away from the tree.

#### **8.0 Consideration of Representations to confirming the TPO**

8.1 **Water Supply Pipes** – There has been no evidence of damage to the water supply pipe provided. Southern Water as with all other statutory undertakers abide by the National Joint Utilities Group Volume 4 and 7 Guidelines. This states the use of blue polymer pipes (less prone to movement damage) and laid at a depth of 750mm (the majority of the root system of any tree is in the surface 600mm of soil)

8.2 **Tree Roots are damaging surface water drains** – Photographic evidence from an objector have been provided showing tree roots blocking a pipe within surface water drains. The drainage contractor has confirmed that the photographs were of a pipe removed from the surface drainage system and were taken on the day that he attended site. There is no evidence to prove conclusively that the roots are from the Sycamore rather than other smaller trees in closer proximity to the drains although size of material is indicative that this is the case. No information is available as to the nature of the repair made or of any guarantee as to its durability. Damaged, poorly maintained or repaired drains are vulnerable to root penetration. There is no evidence to suggest that that the drains have been laid so close to the tree so as to prevent their reasonable repair and future maintenance. With good repair the opportunities for ingress of tree roots into the surface water drains can be minimised or prevented. Previous lack of maintenance of the surface water drains is not a justification for the felling of the tree while alternative options remain available.

8.3 **Lack of Light** – The subject tree stands to the north of the 69 - 72 Riverside Gardens, so there is a loss of ambient light only. The distance between the canopy and the nearest windows is 5 metres. The degree of shading in this instant would not justify felling.

- 8.4 **Tree leaves and trunk diseased** – Tar spot *Rhytisma acerinum* is present on the leaves of the subject tree although this fungus is considered to be conspicuous but relatively unimportant as it does not cause long-term injury or endanger life of their host, (Forestry Research, 2021, 'Sycamore', Forestry Commission). There is also disease of the trunk reported; on close inspection only lichens were recorded. Lichens are non-parasitic and do not harm the trees they grow on - trees rich in lichens support more wildlife than trees without lichens. Sycamore are considered equal to Ash and Oak for the number and diversity of lichens it can support, adding to the tree's biodiversity value.
- 8.5 **Honeydew and bird droppings** - During late spring and summer Sycamore foliage will harbour aphids, which will lead to honeydew fall out – sticky residue falling from the tree. The quantity will vary from year to year, but is rarely absent altogether. This fall out is unpleasant in that it not only renders areas beneath the tree sticky, but also encourages the growth of sooty mould, which turns affected surfaces black. This is not only disfiguring but may also reduce growth of cultivated garden plants. The leaves of Sycamore attract Aphids which in turn support a wide range of ants, birds, bees and in some cases even bats in search of honeydew. The honeydew will affect the car parking areas to the front of 69 – 72 Riverside gardens and the car parking space and front garden of 75 Riverside Gardens. The rear garden amenity space is unaffected by the Honeydew. The issue of falling bird detritus is not so severe that it detracts from the reasonable use of the car parking spaces or enjoyment of the front garden of 75 Riverside Gardens to a greater extent that is found in elsewhere in the Borough. The extent of this issue would not ordinarily be seen as justification to fell.
- 8.6 **The tree produces a large quantity of leaves every year and when they fall they are a safety hazard to the public using the public footpath. Time and effort to clear away from my parking area.** - Sycamores have potential for a heavy, dense canopy, which will give rise to large volumes of leaf litter, to which this tree is no exception. The volume of leaf fall would be sufficient, if not removed, to cause harm to grass and other plants beneath the tree. Leaves will need to be dealt with as a normal part of property maintenance at the cost of some inconvenience to the owner and those neighbours either overhung and or downwind from the tree. Test Valley Borough Council's Street Cleaning Team have confirmed that they have a legal duty to keep streets and pavements clean and free from litter and other arisings such as leaves, and that regular leaf clearance is part of their responsibility throughout Romsey including the streets of Riverside Gardens. The Garden Waste Collection Service is a chargeable service provided by the Council. The cost of subscribing to the service depends on the number of wheeled bins or reusable sacks to be emptied each fortnight. The annual charge is £36 for the initial subscription and £20.50 for each additional subscription. Leaf fall on its own is not ordinarily a concern that would be seen as sufficient reason for permitting tree felling.

- 8.7 **When in leaf the tree obliterates the view from properties** - Members will be familiar with the principle that there is no right to a view. Views out from ground floor windows of 69 – 72 Riverside Gardens, in the direction of the subject tree, is across the parking area to a 2m high close board fence. The canopy height sits at approximately 5m above ground level and a view of the street can be had between the fence and the canopy. The first floor outlook will be affected seasonally and will be partially reduced when the tree is in leaf. Seasonal loss of a view on its own is not ordinarily a concern that would be seen as sufficient reason for granting consent to fell a tree.
- 8.8 **Council's assessment of amenity inconsistent in administering tree protection on the Riverside Gardens Estate** – Each tree that is subject to a Conservation Area Section 211 notification is considered on its own merits. For example, if the decision of the tree officer is No Objection to the felling of tree A it will not necessarily be the case that the same decision would be made for a notification to fell tree B. Officers use a standardised form and process for the assessment of trees when considering making a TPO. This ensures consistency of approach in each case and is in line with current guidelines and legislation.
- 8.9 **All previous applications to fell trees at Riverside Gardens have been granted** – All application to fell TPO trees or notifications to fell trees in conservation areas are judged on the tree's merits. A recent example of this is notification 20/02928/TREES to fell trees at a property at Riverside Gardens. Following conversation with the customer it became apparent that alternative works (pruning rather than felling) the tree would resolve the customer's concerns. The customer withdrew their notification and submitted a new notification for an alternative proposal.
- 8.10 **Risk of major property damage to the 5 properties within 8 metres of the tree in a severe storm** – Inspection of the tree did not reveal any evidence that the tree is unstable or suffering from any significant physical or structural defects. Any tree should be inspected on a regular basis to ensure on-going health and safety. The tree appears to be sound and stable such that its condition does not justify a reason for felling.
- 8.11 **The tree's roots and debris prevent Hampshire County Council (HCC) carrying out its Duty of Care** – HCC has a legal duty to maintain pavements which form part of the public highway (as is understood to be the case here). Approach has been made to HCC but no response to this point had been received at the time of writing this report. If the tree roots and/or debris is preventing safe passage this can be reported directly to HCC. Supporting representations have been received that state there been no observed difficulties for buggies or wheelchairs passing the tree.

- 8.12 **The area of pavement directly under the tree is frequently dangerous for elderly people and wheelchair users** – Test Valley Borough Council (TVBC) Street Cleaning Manager has confirmed that TVBC has a duty to keep pavements and streets clean and clear of debris by both manual clearance and using mechanical road sweeper (where parked cars allow access to do so) and will do so as matters of routine or when specific problems are reported to them.
- 8.13 **Protecting a tree with a low amenity value** – The subject tree has been assessed using the Test Valley Borough Council – Amenity Assessment form that looks at the tree's location, prominence, other trees, tree form, tree size, audience frequency and additional considerations. It scored highly in all categories with a score of 24 out of a possible 32, this compares well with the scores for the last five TPO's made by TVBC scoring an average of 19 points. A recent Capital Asset Valuation of Amenity Trees (CAVAT) valuation, provided by an independent source, calculated the amenity value of the subject tree at £91,511.
- 8.14 **Imposing problems, costs and dangers for the tree's neighbours** - The problems and costs associated with living close to trees is considered no more or less burdensome than the responsibilities expected of many householders. Any perceived danger can be minimised by regular health and safety inspection and management of the tree.
- 8.15 **The tree does not enhance the appearance of the area and does not appear to attract wildlife** – The subject tree is a mature specimen that positively contributes towards the character of the locality and helps to soften Riverside development with its areas of hard landscape, parking areas, driveways and houses. The tree attracts a multitude of birds and insects most of which can be considered species common and abundant to an urban area but this does not detract from the fact that the tree still provides a habitat that is used by many species as a source of food and shelter.
- 8.16 **The effect of the tree on personal rights to the full use and peaceful enjoyment of property** – Article 1 of the First Protocol to the European Convention on Human Rights (incorporated into UK law by the Human Rights Act 1998) provides that a person is entitled to peaceable enjoyment of their possessions. This is a "qualified right" and it is permissible to enforce laws that the state considers necessary to control the use of property in accordance with the general interest. Planning legislation is considered to be an example of laws permitted under the Protocol. The exercise of controls over the use of property (such as making/confirming a TPO) must be proportionate and strike a fair balance between the rights of the individual owner and the rights of the community. This is only possible where the Authority can show that its actions are lawful and in the public interest. In this case, the TPO has been made under Section 198 of the Town and Country Planning Act 1990 and in compliance with the Town and Country Planning (Tree Preservation) (England) Regulations 2012 and is therefore lawful. The report concludes that it is expedient in the interests of amenity to make provision for the preservation of the tree in question, in accordance with the statutory test set out in Section 198 of the 1990 Act.

Given the value of the amenity of the tree and the contribution it makes, the controls resulting from the TPO are considered proportionate. Although the controls may have some adverse impact on individuals as set out in the report, it is considered that the amenity of the tree outweighs any such adverse impact.

- 8.17 **A number of large branches have fallen from the tree on to cars.** – The tree shows no signs of large branches being lost from the crown structure. It would be expected that large tear wounds or branch stubs from broken branches would be evident. No damage of this type was recorded during the Tree Officers' inspections. There is no damage to cars reported to the council and no photographic evidence has been made available.
- 8.18 **No evidence of Climate Change** – Trees store carbon by taking CO<sub>2</sub> from the atmosphere and storing this as carbon. The Sycamore is a relatively long lived species and will continue to store carbon throughout its life. The benefits of trees in helping to combat climate change are well documented and readily access to all.
- 8.19 **Supporting Representations**
- 8.20 Where supporting representations deal with matters referred to by objectors, the observations of officers are set out above. In respect of the other points made by supporters, officers would agree with the comments made save in respect of:
- 8.21 **No evidence of roots in Surface Water Drainage System** – TVBC have received photographic evidence and information supporting the claim that roots have caused a blockage in the system with the need for a section of pipe to be removed and replaced. This is considered under 8.2 above.
- 8.22 **The TPO tree is a specimen/champion tree** – The Sycamore tree is a tree with high public amenity value but it does not represent the best of its species and does not justify the description of champion tree.

## 9.0 **CONCLUSION**

- 9.1 Notification was received to fell one Sycamore tree adjacent to 69 -72 Riverside Gardens, Romsey, Hampshire, SO51 8HN
- 9.2 Assessment of the tree revealed a tree in good overall health and condition.
- 9.3 Representations were received in favour of retention of the tree.
- 9.4 Removal of the Sycamore tree would be detrimental to the amenity of the area and have an adverse impact on the street scene. Felling the tree would neither enhance nor preserve the character and appearance of the Conservation Area.
- 9.5 The outcome to determining the Conservation Area Notification was the making of a new TPO.
- 9.6 Objections to the TPO have been received from four residents of Riverside gardens. Some thirty eight representations in support of the TPO have been received.

9.7 No significant reason, fault or defect has been found by officers, nor has sufficient weight of evidence been presented that would justify its loss and override the public amenity contribution made by this tree to the area generally, or the Conservation Area designation specifically.

10.0 **RECOMMENDATION**

10.1 **That TPO.TVBC.1223 is CONFIRMED without modification.**

Background Papers (Local Government Act 1972 Section 100D):

Background Papers A - Three objections including any supporting material.

Background Papers B- Forty Four of support.

Background Papers C - CAVAT assessment record from HCC; email from objector's drainage contractor.