

**APPEALS AND REVIEWS COMMITTEE, 19 April 2021**BOROUGH OF CHARNWOOD (129 Rothley Road Mountsorrel) TREE PRESERVATION ORDER 2020 – PROVISIONAL**1.0 Introduction****1.1 Background**

An application was received seeking pre-app advice on the potential to build a new dwelling within the garden space of the above address. The garden although somewhat neglected contains a number of trees which individually and collectively provide a significant landscape feature to the street by way of a punctuation and softening green relief to the built form of the street.

The trees of merit consist of 1 x ash, 2x holly, 2x sycamore are in good condition as viewed from ground level. The trees are early mature and mature, of good form and, most importantly, and visible from the street, the junction with Rockhill Drive and in the case of ash from Linkfield road and Maitland Avenue.

**1.2 The Site**

The site is the domestic side and rear garden of the dwelling. The dwelling is one of a semidetached pair. The design intention was that the space between the dwelling pair and the next semi-detached be unbuilt. Such gaps perform important function of relief in built form and allow for trees and other vegetation to flourish. While it is accepted the garden is somewhat overgrown and unkempt through neglect the overall principle, is that the space be garden. The trees are an important component in this garden, the effective landscape characteristic of which is wooded shade. The side garden presents an open aspect to the street with a parking platform and assorted dilapidated outbuildings.

**1.3 Condition of the trees**

The trees are in fair-good condition of reasonable form and were correctly evaluated for their collective public amenity merit. Not all trees were considered some are too close to the dwelling and or interfere with drains or are of poor form failed the amenity and expediency test. The trees selected are the principal trees of the garden; T1 ash, T2 sycamore, T3 holly T4 sycamore and T5 holly. Trees which are smaller and /or in poor condition, and/ or poor aesthetic form were not included.

**2.0 The Objections to the Order**

The objections to the Order were received by email.

## **Objection - Mrs Baksa – several correspondences dated 26 November 2020**

The main thrust of the objection was to reference personal circumstances.

### The objection covered:

#### 2.1 Effect of trees on the property.

The objector included her standard buyers RICS home building survey dated 26 June 2020. The surveyors report on page 50 states *“There are a number of trees within possible influencing distance of the property. Whilst these do not appear to have caused damage to the building, proper management including pruning but ideally removal is necessary”*. The poor condition of dwelling and outbuildings is not attributed to the trees. The second part of the objection claims that the tree are causing significant damage to the property drains. A drain inspection report by All Drains Services dated 21 July 2020 detailing the disjoints and collapse of drains confirming the present of tree roots. Drainage clearance works was carried out following a call-out to clear roots and soil from blocked drains with a high-pressure waterjetter. The recommendation was to replace or repair and the objector chose the cheaper repair option which uses a resin sleeve inserted to the collapsed drains. All aspects of the repair are now completed.

#### 2.2 Disagreement over the assessment of the trees –clarification email of objection dated 15 March 2021

2.2.1 Mrs Baksa *inter alia* sets out the view that all the trees covered by the Order should not merit protection saying *“The street in itself is in any case built up with most properties being without trees or greenery, so the removal of the trees from our property would be in keeping with the rest of the street. We do not accept that our particular garden provides a significant landscape feature or contribution in this particular locality. The street is long and overall is very built up and hard in form of which removal of the trees would make very little difference to the overall visual of the street”*.

2.2.2 The number of trees in relation to the size of the garden asserting it to be overbearing and excessive.

2.2.3 Mrs Baksa cites the drainage works and the potential for future subsidence mentioned in the RICS report should the trees be retained.

2.2.4 Mrs Baksa states an intention to retain that principle tree to the rear garden space and to enhance the garden.

## **Objection by Golby & Luck on behalf of Mrs Baksa Tree Preservation Order Assessment dated 12 January 2021, a 51 page report.**

The objection covered tree condition, aesthetics of structural form and potential to mature in terms of estimate safe life expectancy all aspects which address either a tree's public amenity value and /or expediency of protection.

The report looked at each of the trees T1 –T5 individually. (See appendix for extracted key points of argument and my response). Golby and Luck do not argue lifting of the Order but make a proposal for modification excluding T2-T4 from the Order and to confirm the Order in the case of T1, only.

The report concluded only T1 ash to merit protection under the Order.

The report with regard to the ash, T1 state in para 3.2 that is areas in good physiological condition but further down then claims it is in fair physiological condition . These points therefore contradict. It is acknowledged that the tree provides public amenity value.

### **3.0 Response to the Objections – Mrs Baksa**

With regard to the cited personal matters it should be noted that TPOs are neither made nor revoked on the basis of 'personal circumstances' no matter how compelling they may seem. I will therefore not address them not least because they have little or no material weight in the evaluation for protection for trees. The focus should rather be on whether the protection of tree is fair and reasonable.

#### **3.1 Effect of trees on the property.**

The surveyors statement quoted above is a general statement and indicates that the condition of the house cannot be attributed to the presence of the tree. The second part of recommendation that "ideally removal is necessary" is a standard catch all caveat of such reports not borne out by the findings of the report.

Trees do not 'break into' sound drains. Their root systems take advantage of drains which have already been compromised either by cracks or collapse. The roots within a drain may be removed as part of remedial and or replacement drain works providing the stem and anchor roots are not compromised. Clearly, if the stems and or anchor roots of a tree were so close as to exert lateral pressure on the drainage apparatus a case could be made for the trees removal. However this has not been the case presented even when I asked whether anchor roots might be implicated. The solution chosen by Mrs Baksa is the cheaper repair option involving CIPP / cure-in-place pipe trenchless rehabilitation method. Mrs Baksa has declined the recommendation to enhance protection of her drains by retrofitting a proprietary root deflector. My understanding is that this drainage repair is now complete.

#### **3.2 Disagreement over the assessment of the trees**

3.2.1 Mrs Baksa cited the very street scene point though in reverse to the characteristic of the street and the role it plays in terms of urban design. She correctly identified that the street is harsh with few trees. Her observation thus supported that fact that the side garden is only one of few current spaces with trees to punctuate an otherwise harsh built streetscene. Of particular importance to the function are the trees fronting the side garden and the tree to the rear, the ash T1.

3.2.2 The number of trees in relation to the size of the garden asserting it to be overbearing and excessive. The Order does not cover all trees nor all woody stemmed species. Mrs Baksa counted 20 trees the Order only protects 5. This level of protection therefore cannot be regarded as over bearing or excessive as there is still scope to remove trees and other vegetation so as to create better light penetration and facilitated a reasonable use of the garden.

3.2.3 Mrs Baksa cites the drainage works and the potential for future subsidence mentioned in the RICS report should the trees be retained. The drainage works are completed without impediment. No evidence of latent or incipient subsistence has been submitted. The Order does not prevent the renovation and updating of the house.

3.2.4 It is welcomed and acknowledge that Mrs Baksa expressed a desire either way to the retention of the ash T1. The view is a point of common ground.

#### **4.0 Response to Objection from Golby and Luck**

On the points analysing ash T1 I agree it is in good physiological condition and suggest their latter contradictory statement be dismissed. They agree the tree merits protection and so this is a point of common ground.

Regarding sycamore T2 it should be noted that sycamore is well established in England at least since Roman times. It should be noted that many non-native species of animal and plants are well established such as sycamore, horse chestnut (late 16<sup>th</sup> C) and beech (Neolithic introduction considered native only in the south of England) all of which can and should be regarded as naturalised to the British Isles in much the same way we regard the rabbit and the pheasant. Sycamore is classified by [forestresearch.gov.uk](http://forestresearch.gov.uk) as '**naturalised**' with **British provenance** therefore should not be described as 'alien' suggestive of it being invasive and legally restricted by DEFRA. Therefore the point about it being non-native should be dismissed from consideration because the species is naturalised in the wild and has distinct British provenance as noted by the Woodland Trust. The reference to the BS5837:2012 I in regard to T2 sycamore moot because the tree is according to Golby and luck 3m from the drains (para 3.7 ) The stated minimum distance in the BS5837:2021 Table A.1. for young trees of stem diameter 600mm or more is 3m. It meets the minimum standard.

On the points of direct public visibility and aesthetic form, I agree the tree T2 sycamore could be omitted from the Order.

The multistem holly tree T3 contributes secondary density to the grouping of trees but is agreed it does not provide primary visibility not would it individually. on its own merit TPO On the points of direct public visibility, I agree the tree T3 holly could be omitted from the Order.

With regard to the form of T4 sycamore I contest the point of forking and branch attachment is debatable especially when one considers latest research such as carried out by Dr Duncan Slater of Myerclough College. This means the traditional view on forking is open to much debate and further research. It is wrong to condemn that all branching or forking to be inherent a 'defect' or dangerous. Forking and branching are arguably survival adaptations of dicotyledonous trees. Arguably the use of term and concept 'defect' to describe natural structures is questionable. There is no evidence of incipient failure.

I contest the points of public visibility and amenity in relation to T4 sycamore. The trees crown is visible from vantages along Rothley road as well as directly opposite in good full visibility and the junction of Rockhill Drive as evidence in Photograph 5 of the Golby & Luck report. This is sufficient to merit protection. It is agreed the site is constrained and the tree will require periodic crown reduction. This alone should not be taken to conclude protection should not be afforded the tree. The tree should be retained in the Order.

I contest the points made to suggest that T5 holly ought not be protected. It is irrelevant that the holly T5 was originally part of a hedge. It is not very much a tree.. It is prominent on the frontage and makes a significant contribution to the street scene. Arguably is it of sufficient stature to be prominent on the frontage. The tree should be retained in the Order.

## **5.0 Conclusion**

Removing the Order by failing to confirm it at this appeal and review committee is not being sought by the Objectors. Instead they propose the modification of the Order to protect only T1 ash. This would mean that other trees which do provide publically visible amenity and contributed to the street scene would be lost with impact on the character of the area. I concede that the argument to protect T2 and T3 are tenuous and that these trees do not make sufficient visible amenity. It is accepted that they are not of particular merit and were they assessed individually would not attract a TPO. Therefore, as part of a reconsideration taking into account the report by Golby & Luck, the principal objectors consultant assessment, I agree that both T2 and T3 holly could be omitted. However both T4 sycamore and T5 holly do make prominent amenity contribution along with T1 ash. The committee is therefore recommended to confirm the Order with modification to omit T2 and T3, only.

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## APPENDIX A -

Photographic study of context and presentation of site 129 Rothley Road  
Mountsorrel

Character Context – opp site looking south along Rothley Road



Google street scene imagery dated May 2016

Character Context- View looking North along Rothley Road, including junction with Rockhill Drive



Character Context- from opp Co- op Store on Rothley Road



Here the T5 Holly and upper crown of T4 ( as vegetated backdrop to built form) provide green relief to the otherwise harsh built form of the street. Visually the holly balances the distant Lombardy Poplars and other trees to south.

Character context- mid distant view near junction with Linkfield Road



Again T5 holly and T4 Sycamore contribute to the street scene.

## Site presentation



Google street imagery May 2016

## Site presentation –at junction with Rockhill Drive



Arrows indicating L-R T1 T4 and T5

Imagery date 2016 so the trees clearly then and now make a significant contribution to the street scene. While most properties do not present tree or green relief, some do and this provides cadence which repeats along the road in both direction.

## APPENDIX B

### Analysis of main points of the Golby & Luck assessment of trees they claim should not be afforded protection and my response

Sycamore T2		
Golby & Luck tree assessment	Senior Landscape Officer response	Recommendation
semi-mature	this is a point of common ground	
Good physiological condition with poor structural condition due to squirrel damage and being poorly worked.	The reference to poor form is accepted as valid. The tree exhibits evidence of topping, a practice which is not recommended as it can lead to multiple weak unions more prone to fracture.	valid point agreed and conceded
not seen clearly from direct vantage	The point regarding the lack of direct visual presentation to a public vantage is a valid point though it should be remembered that it provides background density to the appearance of trees. It is conceded that if trees are reductively and individually assessed the tree would not on its own merit TPO though were the TPO to be a group TPO it could.	valid point agreed and conceded
It makes a claim in para 3.5 that because the tree is not native that it adversely impacts native diversity.	Sycamore is well established in England at least since Roman times. It should be noted that many non-native species of animal and plants are well established such as sycamore, horse chestnut (late 16 <sup>th</sup> C) and beech (Neolithic introduction considered native only in the south of England) all of which can and should be regarded as naturalised to the British Isles in much the same way we regard the rabbit and the pheasant. Sycamore is classified by <a href="http://forestresearch.gov.uk">forestresearch.gov.uk</a> as ' <b>naturalised</b> ' with <b>British provenance</b> therefore should not be described as 'alien' suggestive of it being invasive and legally restricted by DEFRA. Therefore the point about it being non-native should be dismissed from consideration because the species is naturalised in the wild and has	inadmissible

	distinct British provenance as noted by the Woodland Trust.	
not rare	This is a point of common ground	
not unusual	This is a point of common ground	
not related to heritage	This is a point of common ground	
It references the drainage report and that the tree would have caused displacement and includes Table A.1 from BS5837:2021	The reference to the BS5837:2012 is moot because the tree is according to Golby and Luck 3m from the drains (para 3.7 ) The stated minimum distance in the BS5837:2021 Table A.1. for young trees of stem diameter 600mm or more is 3m. It meets the minimum standard.	not agreed.
	<b>Conclusion</b>	<b>Modify Order to omit</b>

<b>Holly T3</b>		
<b>Golby &amp; Luck tree assessment</b>	<b>Senior Landscape Officer response</b>	Recommendation
early mature	This is a point of common ground	
a multistem specimen of good physiological condition and poor form	This is partially agreed. However holly takes well to shaping such as topiary and poor aesthetic form can be mitigated	not agreed as valid objection to Order
20yr+ estimate safe lifespan	This is a point of common ground	
limited direct public visibility therefore limited public amenity value	The tree contributes secondary density to the grouping of trees but but is agreed it does not provide primary visibility not would it individually on its own merit TPO	agreed and conceded
native	this a point of common ground	
not rare or unusual	This is a point of common ground	
no heritage significance	This is a point of common ground	
	<b>Conclusion</b>	<b>Modify the Order to omit</b>

<b>T4 Sycamore</b>		
<b>Golby &amp; Luck tree assessment</b>	<b>Senior Landscape Officer response</b>	Recommendation
semi- mature	this is a point of common ground	
good physiological condition	This is a point of common ground	
structural form poor form- moderate defect co-dominant stems with included bark	the point of forking and branch attachment is debatable especially when one considers latest research such as carried out by Dr Duncan	not agreed as a valid objection to the Order

	Slater of Myerclough College. This means the traditional view on forking is open to much debate and further research. It is wrong to condemn that all branching or forking to be inherent a 'defect' or dangerous. Forking and branching are arguably survival adaptations of dicotyledonous trees. Arguably the use of term and concept 'defect' to describe natural structures is questionable. There is no evidence of incipient failure.	
limited visibility not clear from Linkfield road or Maitland Avenue only from Rothley road	The trees crown is visible from vantages along Rothley road as well as directly opposite in good full visibility and the junction of Rockhill Drive as evidence in Photograph 5 of the Golby & Luck report. This is sufficient to merit protection	not agreed as a valid objection to the Order
not a good representative example	The tree is typical in form and therefore representative.	not agreed as a valid objection to the Order
constrained environment; would require crown reduction as part of management	It is agreed the site is constrained and the tree will require periodic crown reduction. This alone should not be taken to conclude protection should not be afforded the tree.	not agreed as a valid objection to the Order
non native	irrelevant point	inadmissible
not rare or unusual	This is a point of common ground	
no heritage significance	This is a point of common ground	
	Conclusion	<b>Retain in the Order and confirm</b>

<b>T5 Holly</b>		
<b>Golby &amp; Luck tree assessment</b>	<b>Senior Landscape Officer</b>	<b>Recommendation</b>
originally part of hedge	irrelevant as the specimen is now very much a tree	
good physiological condition	this is a point of common ground	
visible in the street scene	this is a point of common ground. It is prominent on the frontage and makes a significant contribution to the street scene	
not of particular stature	arguably is it of sufficient stature to be prominent on the frontage	
native tree	this is a point of common ground	
not rare or unusual	this is a point of common ground	

no heritage significance	this is a point of common ground	
	Conclusion	<b>Retain in the Order and confirm</b>