

### Officer Report

<b>CASE NO:</b> 22/00799/TREEPO	<b>OFFICER:</b> Sam Reader
<b>DATE TPO MADE:</b> 15 <sup>th</sup> August 2022	<b>DATE OF EXPIRY:</b> 15 <sup>th</sup> February 2023
<b>WARD:</b> Prestbury	<b>PARISH:</b> Prestbury
<b>LOCATION:</b>	Hill Court, Hillcourt Road
<b>PROPOSAL:</b>	TPO to protect: 2 holm oaks (T1 & T2) 1 coast redwood (T3) 1 sycamore (T4) 2 horse chestnuts (rear of property) (T5 & T6) 1 pear (rear of property) (T7)

**RECOMMENDATION:** CONFIRM TPO WITHOUT MODIFICATION



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## 1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 Regency property with several mature and several young trees around the site.
- 1.2 Two old TPOs were listed on site causing some duplication and missing some significant trees. Both TPOs have been revoked, replaced with TPO799 to include the trees listed above. Although the trees to the rear of the property have limited public visual amenity, continued interest in the development of the site and lack of formal protection makes them vulnerable to removal or inappropriate pruning.

## 2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

### **Relevant Planning History:**

**22/01316/PREAPP      2/7/22      CLOSED**

Erection of two single family dwellings to the rear with alterations to the landscaping

**19/00827/FUL      25/4/19      WITHDRAWN**

Demolition of modern lock-up garages within the curtilage of Hill Court, erection of 2 no. mews houses to rear of existing building and reconfiguration of existing external areas to form parking and amenity spaces.

## 3. POLICIES AND GUIDANCE

### **NPPF**

Sections 179, 180 Habitats and Diversity

### **Adopted Cheltenham Plan Policies**

GI2 Protection and Replacement of Trees

GI3 Trees and Development

### **Supplementary Planning Guidance/Documents**

The Cheltenham Climate Change SPD (June 2022)

## 4. CONSULTATIONS

Tree owner and interested parties (neighbours where trees overhang boundaries, Parish and Ward Councillors) are given 28 days to object to the TPO.

## 5. PUBLICITY AND REPRESENTATIONS

- 5.1 1 site notice was displayed
- 5.2 1 objection was received (adjoining neighbour to the rear, 4 Lexington Square)
- 5.3 The objection received is summarised (all in their own words but their name has been redacted):

*"1. Lack of amenity value*

*a. T5 and T6 have no scarcity value or intrinsic beauty.*

*b. They provide no enjoyment to the public and have no material impact on the local environment: only their crowns can be seen from any publicly accessible land, and only at a significant distance;*

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*the arboricultural fabric of the area is entirely unaffected by them. The Planning Committee is asked to attend the public area nearest T5 and T6 (rather than Hill Court, which is private land) and assess the lack of amenity value for itself. If one of the purposes of this TPO is to benefit the residents of Hill Court or its neighbours, that is an impermissible reason because it is not a public benefit.*

*c. The general cultural and historic value of Horse Chestnuts in Cheltenham is irrelevant in circumstances where T5 and T6 are otherwise of no public value, and in light of the fact that the vast majority of Horse Chestnuts in Cheltenham – including those in public places with high amenity value – do not have any TPO applied to them.*

### 2. Expediency

*a. No risk has been identified of T5 or T6 being cut down or pruned in ways which would have a significant impact on the amenity of the area. The possibility of planning applications in future cannot be relevant, as all the other trees which are proposed to be included in this TPO will be protected, and (in practical terms) no possible development could take place involving only the area containing T5 and T6.*

*b. Objector's private law rights (including common law pruning rights) would be significantly limited by the TPO (because they would need to seek third party consent each time they needed to prune trees which abut their own land), whereas there is no – or minimal – relevance to the public, whether or not T5 and T6 are made subject to a TPO.*

*For those reasons (limitation of Objector's common law rights, in the absence of any risk of harm, and with no public benefit), the balance of expediency clearly falls in favour of not including the two Horse Chestnut trees, T5 and T6, in the TPO."*

At the request of the objector, their emails have been included as an addendum to the report.

## 6. OFFICER COMMENTS

### 6.1 Determining Issues

Both trees would be removed as part of any permission to the development of 22/01316/PREAPP. Any retention of the trees would render them out of proportion with the proposed modest rear gardens. Similarly, horse chestnuts drop much tree litter (conkers, flowers, leaves etc) and could become a perceived nuisance to garden owners. Without formal protection, the trees could be entirely removed without further recourse to the Council.

All trees listed on the TPO are worthy of protection as measured against the TEMPO guidance (TEMPO guidance is a non-statutory but nationally recognised and used scoring system for determining the suitability of a tree for TPO). Both trees scored the following:

1. A. Condition: Fair / Satisfactory: 3 points
- B. Retention span: 40-100 years: 4 points
- C. Public visibility: Large trees visible only with difficulty: 2 points
- D. Other factors: No additional features: 1 point
2. Expediency: Foreseeable threat to tree: 3 points

**Total: 13 points – TPO defensible.**

(a sample TEMPO has been included as an addendum).

The trees add to the arboreal fabric of the area and, despite not being prominent from the street, are large trees which provide screening into and out of the site along, wildlife and biodiversity benefits, carbon sequestering and other benefits to the local green infrastructure (e.g. temperature lowering).

The Objector's private law rights to prune the tree on their side of the boundary without the tree owner's permission would be unaffected by the TPO. Although they would have to apply to the Council first, the impact would be minimal. In most cases, tree surgeons apply on behalf of their clients. The turnaround on applications is usually within a few weeks and, given that most tree surgeons have a normal lead-in time of at least a month, there would unlikely be significant delay to any intended works.

The horse chestnuts are alleged to have caused damage to the neighbour's drive, car port and garage through root expansion and subsidence, also through dropping branches. The Trees Section would not object to the trees being reduced to the boundary edge to reduce the risk of future conflict caused by the trees, so long as the work was completed in line with BS3998 (2010) (the British Standards for Recommendations for Tree Work).

## **7. CONCLUSION AND RECOMMENDATION**

- 7.1** The trees on site perform a valuable function for amenity, wildlife and screening, despite some of the trees being to the rear of the property. Therefore, the officer's recommendation is to confirm the TPO without modification. Any other outcome would leave the trees vulnerable to removal.

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7.2 Addendum (Objector's emails added at their request – name and contact details redacted):

**From:**

**Sent:** 10 September 2022 19:32

**To:** Tree Section (CBC) <[Trees@cheltenham.gov.uk](mailto:Trees@cheltenham.gov.uk)>

**Cc:** Sam Reader <[Sam.Reader@cheltenham.gov.uk](mailto:Sam.Reader@cheltenham.gov.uk)>

**Subject:** FAO Christopher Chavasse - Objection - Tree preservation orders T5 and T6

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Dear Mr Chavasse,

I have received and carefully considered your email of 5 September 2022 at 14:18, and I confirm that I do maintain my objection to the making of TPOs in respect of the two horse chestnut trees T5 and T6 at Hill Court, Cheltenham (the "Two Trees").

For the avoidance of doubt, I confirm that I do not object (and have never objected) to the making of a TPO in respect of any other tree at Hill Court (such as the pear tree to which you have referred in the second bullet point in your email).

In making my objection, I repeat the points which I made in my email of 4 September 2022, and I add the following points.

I note that the statutory issues for consideration are the amenity value of the Two Trees to the public, and the expediency of making the order. The less their amenity value to the public, and the less expedient it is to make the TPO, the more likely it is that my objection will be upheld.

The amenity value of the Two Trees, in terms of their impact on the local environment and particularly their enjoyment by the public, is extremely limited. As you have noted, there is no public access: only their crowns can be seen, and only "from a distance", as you put it in the first bullet point of your email. There are other trees on Hill Court and surrounding land which make up the "arboricultural fabric", and once the Objection Panel members attend site, and focus on looking at the canopy from a public area (as opposed to viewing it from Hill Court or neighbouring properties), they will see almost no difference, or none at all, between the visible canopy with or without the Two Trees.

The Blue Book says that amenity value means a reasonable degree of public benefit (that is, "amenity value" does not mean benefit for the private occupiers of properties immediately around the Two Trees). Therefore the comments in the first bullet point in your email, about the residents of Hill Court and its neighbours enjoying the Two Trees, and the Two Trees hiding the car park behind Hill Court – whether factually correct or not – are irrelevant to the making of the TPO. These reasons do not amount to any sort of public benefit, and they are an impermissible reason for making the TPO.

The Blue Book also suggests that "amenity value" may be connected to the intrinsic beauty and/or scarcity of a tree. You have accepted that the Two Trees are not rare, in the second bullet point in your email, and you have not suggested anywhere in your email that they have any particular aesthetic value.

Your point about the general cultural and historic value of Horse Chestnuts in Regency tree planting (also in your second bullet point) is surprising: there are only 550 TPOs across the whole Borough of Cheltenham, of which it must be safe to assume that only some relate to Horse Chestnuts. I also assume that those are generally Horse Chestnuts in public areas, with very high amenity value for the public. The Objection Panel members should consider how many Horse

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Chestnut trees on private land, planted amongst other trees and almost invisible to the public, are the subject of TPOs in the Borough of Cheltenham. I cannot know, but I would guess that there are no such TPOs, or very few indeed.

The same point can be made about your third bullet point: that the Two Trees are not in a Conservation Area. That point surely says nothing about amenity value at all: much of Cheltenham is not a Conservation Area and contains many, many trees which have not been made subject to a TPO.

The Blue Book does say that “expediency” may include considerations of whether there is a risk of a tree being “cut down or pruned in ways which would have a significant impact on the amenity of the area”.

Do you know of any such risk to the Two Trees? As a neighbouring landowner who receives a significant personal (not public) benefit from the screening which the Two Trees provide for my home, I am not aware of any such risk, and indeed I am as keen to protect the Two Trees as any other nearby landowner. There has been no felling and no harmful pruning, and no suggestion whatsoever that any such activity might take place. On the contrary, as I described in my first email, the only incentive is to keep the Two Trees healthy, tidy and well-pruned.

That is amply supported by the disease issues raised in your fourth bullet point: if indeed the Two Trees are in a normal condition and without significant disease, there is no risk of improper pruning.

The comments you make in the fifth, sixth and seventh bullet points in your email are, in fact, an excellent illustration of why it is so important to apply the statutory principles of “public amenity value” and “expediency” in a rigorous way. The Two Trees are on private land abutting my land; I have private, common law rights in respect of pruning on my own land; and I have a valid and proper interest in the general pruning of the Two Trees to minimise the encroachment of their roots and limbs, by liaising with my neighbours. If the Council makes a TPO in respect of the Two Trees, those important private law rights would be made subject to the need to obtain the consent of the State: a significant limitation of my private rights as a landowner, which Parliament has seen fit to impose only in very particular circumstances.

“Amenity value” and “expediency”, and the Blue Book guidance, will therefore need to be carefully considered by the Objection Panel members. They will undertake a balancing exercise between the importance of the Two Trees to the general public, as well as the risk of harm being done to them, against the private law rights of the landowners affected by the making of the TPO.

In the case of the Two Trees – that is, just the two Horse Chestnuts T5 and T6 at Hill Court – there is negligible public benefit and no risk of harm. It cannot therefore be expedient to make these TPOs.

Please forward my objection (both this email and my email of 4 September 2022) to the Objection Panel for their careful consideration.

Yours sincerely

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**From:**

**Sent:** 04 September 2022 13:16

**To:** Tree Section (CBC) <[Trees@cheltenham.gov.uk](mailto:Trees@cheltenham.gov.uk)>

**Subject:** Fwd: Re: Tree preservation orders

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Trees Officer

Head of Planning (Trees Section)  
Cheltenham Borough Council  
Box 12 Municipal offices  
Promenade  
Cheltenham GL50 1 PP

Dear Sir

**Subject: Trees at Hillcourt - Tree Preservation Order**  
**Single tree T5 horse chestnut tree to the north of the property**  
**Single tree T6 horse chestnut tree to the north of the property**

My name is . I am the freehold owner and occupier of 4 Lexington Square, which lies immediately to the north of both of the above trees.

I object to tree preservation orders being made in respect of the above trees.

My objection is made on the following grounds:

- There is no public access to the land on which the trees are situated; therefore, there is no public amenity.
- Moreover, the trees cannot be seen by the public at all; therefore they give no public benefit in the present or future.
- They are not rare trees.
- They are not trees of any cultural or historic value.
- The trees are not in a conservation area.
- The trees do not appear to be healthy; they appear to suffer from leaf blight. In light of that concern, could you please confirm whether the trees have been inspected by a qualified person, to understand their overall condition?
- In recent years, large branches have cracked and fallen from both trees, which affects my safety as the occupier of the adjoining land; I am 78 years old, and so that does cause me concern. Work is likely to be needed in the near future to prevent further branches from damaging my carport and garage, and in the absence of any public amenity whatsoever, it would be disproportionate and onerous to impose the conditions of a TPO on any such works.
- As well as the issue with the branches, the roots of both trees have already caused my tarmac to ridge considerably, and large cracks to the render of my garage are also likely to have been caused by subsidence, due to the high water intake of the root systems of the two trees.
- Again, in the absence of any public amenity whatsoever, it would be disproportionate and onerous to impose a TPO, which would greatly complicate any lopping or pollarding work I may need to have done in order to preserve the integrity of my land and buildings.

I attach 7 photographs, showing the trees as seen from my land, including photographs of the ridged tarmac and cracked render.

If you require any additional information from me, in order to consider my objection fully and properly, please contact me at .

Thank you.



TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

SURVEY DATA SHEET & DECISION GUIDE

Date:	Surveyor:
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<b>Tree details</b>		
TPO Ref (if applicable):	Tree/Group No:	Species:
Owner (if known):	Location:	

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

**Part 1: Amenity assessment**

**a) Condition & suitability for TPO**

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

<b>Score &amp; Notes</b>
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\* Relates to existing context and is intended to apply to severe irremediable defects only

**b) Retention span (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      |

<b>Score &amp; Notes</b>
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\*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              | 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 |

<b>Score &amp; Notes</b>
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**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 habitat 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

<b>Score &amp; Notes</b>
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**Part 2: Expediency assessment**

Trees must have accrued 10 or more points to qualify

- 5) Immediate threat to tree inc. s.211 Notice
- 3) Foreseeable threat to tree
- 2) Perceived threat to tree
- 1) Precautionary only

<b>Score &amp; Notes</b>
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**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 |

<b>Add Scores for Total:</b>
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<b>Decision:</b>
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