17 October 2017

The Rt Hon Sajid Javid MP
Secretary of State for Communities and Local Government
2 Marsham Street, London, SW1P 4DF

Please reply to:
Rebecca Hammond & Chris Rust
Secretary of State for Communities and Co-Chairs, STAG Sheffield Tree Action Groups
Local Government Address
2 Marsham Street, London, SW1P 4DF email
e-mail

Dear Sajid Javid,

Request for Immediate reinstatement of Tree Preservation Order (TPO) on Highway Trees in Sheffield, South Yorkshire

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Part 1 - Request for Tree Preservation Order

We are writing to request that an area Tree Preservation Order be granted urgently to protect the Highway Trees in Sheffield that are under immediate threat of removal as part of the ‘Sheffield Streets Ahead’ highway maintenance programme which is a partnership between Sheffield City Council and the Amey group.

We consider that decisions regarding which street trees in Sheffield are to be felled and which are to be retained, have been made in an arbitrary, erratic and random manner, thus making them, in the words of the Secretary of State for the Environment, “Bonkers” or irrational under the Wednesbury Principle (Lawteacher.net undated) and therefore an unreasonable use, or abuse, of the Council’s powers under the Highways Act.

To prevent further immediate harm occurring to the city’s valuable stock of healthy street trees we urgently request that:

a) they be immediately protected by the reinstatement of an area Tree Preservation Order, covering all “Highway Trees” in the geographic area governed by Sheffield City Council, by powers invested in the Secretary of State under s202 of the Town and Country Planning Act 1990. We strongly assert that it is expedient for the Secretary of State to take the unusual step of exercising this power as the current wrongly judged and irrational felling programme cannot be reversed. Time is therefore very much of the essence.

b) a legal Injunction is sought urgently against Sheffield City Council, their contractors Amey Hallam Highways Ltd, Amey Plc. and, and Amey LG, preventing them from felling any further street trees until such time as the Secretary of State deems appropriate, saving that a tree may be felled if an appropriately qualified independent arboriculturalist recommends in writing that a tree presents an immediate danger to health and safety.

c) the injunction is sought for however long it takes for an independent expert review of policies and practices to be carried out, recommendations made and reliable evidence obtained that those recommendations have been implemented and adhered to.
Part 2 - Reasons for requesting a Tree Preservation Order from the Secretary of State

2.1. Reasons for applying a TPO to publicly owned trees

SCC claim trees are under “good arboricultural management” but an examination of arrangements shows they have lost control.

In general TPOs have not been used to protect trees owned by a local authority. In 2016 Sheffield residents applied for TPOs for street trees in several areas. This was rejected by Sheffield City Council (SCC) on the grounds that the trees were under “proper and good arboricultural/silvicultural management.” SCC went on to say that “The Council remains in complete control and ownership of its highway trees, with a stringent approval, surveying and verification process in place prior to permission-being given for any tree to be felled,” (SCC 2016, 2)

A similar claim was made by Mr Paul Billington, giving evidence for SCC in the recent High Court Injunction hearing before Mr Justice Males, Leeds 2017 - SCC V Fairhall and Others. Mr Billington is the Senior Council Officer managing the Streets Ahead Contract. He stated that SCC used their ‘Independent Tree Panel’ (ITP) to check each felling proposed before making a final decision. However he omitted to explain to the court that following each ITP recommendation, Amey make a further intervention to argue against the ITP recommendation. It is clear from the publicly available audit trail that SCC follow Amey’s lead (Rust 2017).

SCC’s Independent Tree Panel, which includes experts in arboriculture and highway engineering, recommended retaining 43% of condemned trees from a sample of 684. Amey allowed retention of only 10% of the trees. SCC accepted Amey’s judgement in every case. Rust (2017) provides a chain of evidence combined with this numerical analysis to show that SCC are unable to exercise control over tree-felling decisions.

This evidence shows that SCC have handed over arboricultural management to Amey, and that decisions are being made for commercial reasons rather than in the interest of conserving the city’s valuable street trees. It is therefore appropriate to subject these trees to the same protection that would be used for trees on private land. As SCC appears to be compromised in their ability to manage TPOs in this case, it may be necessary to have independent technical oversight, rather than rely on SCC’s own planning processes to oversee and enforce the TPO.

2.2 Majority of condemned trees are healthy

The majority of the threatened trees are acknowledged by the Council and Amey to be healthy and suffering no serious defect or disease.

A selection of professional reports and supporting material is available to support this (STAG 2017).

In particular, a survey report by arboriculturalist Brian Crane (Crane, 2016, 1), who often acts as an expert witness, explains that a large number of street tree felling decisions in Sheffield do not follow good practice and there are no genuine practical reasons for removing valuable trees, (e.g. Crane 2016, 1, para 3.2.4.) He has remarked to Prof Rust that some decisions appear completely irrational since two adjacent trees may exhibit the same degree of disruption to kerbs etc but only one is condemned.

A further report in March 2017 by Ian Dalton (2017, 2), a Tree Officer employed by a London Borough, came to similar conclusions. His report provides useful pictorial evidence of the main practical issues.

It was noted by Justice Males in the recent High Court case, Leeds 2017 - SCC V Fairhall and Others, that the Sheffield Tree Campaigners had supported the removal of dead, dying or diseased trees. It is purely the irrational and unreasonable decisions to remove such a great number of healthy mature trees that the Campaigners object to.
2.3. Damage caused to the highway in most cases is minimal

Many of the reasons for felling given by Sheffield Streets Ahead would not be applied in most other towns and cities.

The majority of trees listed for felling are due to damage to the adjacent surfaces. In most cases this damage is very minor, for example disturbance of kerb stones. An independent engineer’s report explains that many of the reasons for felling given by Sheffield Streets Ahead would not be applied in most other towns and cities and the technical problems presented are minor and routine (Townsend 2017). Tree campaigners and members of the public have had many informal conversations with contractors carrying out highway renewal in Sheffield and they confirm that there is no particular difficulty in working around the great majority of highway trees in the city, including many marked for removal.

There are many low to zero cost engineering options that could be applied to retain many of these healthy trees. In September 2015, at the Highway Tree Advisory Forum, Steve Robinson (SCC Head of Highways) outlined 14 ‘Alternative Highways Solutions’ that are included in the Streets Ahead contract at no additional cost to the Council (SCC 2015, 1). These 14 solutions were subsequently listed in the 5 Year Highway Tree Management Strategy, 2012-2017, that was published in January 2016 (Streets Ahead 2016, 1).

Worryingly, one of the 14 solutions listed in the Highway Tree Management Strategy has subsequently been discounted by Amey on the basis of evidence that existed prior to the contract’s inception. In 37 cases, Amey have rejected a solution (No. 14 - Root Pruning) on the grounds that a 1998 study of cherry trees (Nicoll & Armstrong 1998) had demonstrated that it is not suitable.

It is very disturbing that Amey has agreed to a solution being adopted as part of a scheme, and thus allowed public money to be spent on investigating its application to specific trees, and then claimed that it was never applicable. It is equally disturbing that Amey’s judgement in this case is highly questionable. In recent correspondence, one of the authors of the 1998 study is very critical of Amey’s claim that the report is relevant (Nicoll 2017).

Further evidence of questionable judgements and bad practice can be seen in the Information Commissioner’s Office decision that the Council is unreasonably refusing to provide information in support of their claim that specialist paving has been used to retain 143 healthy street trees. See “Decision Notice” from the Information Commissioner’s Office (ICO 2017).

The UK Roads Liaison Group Code of Practice (which is supported by the Department for Transport) takes “an integrated, risk-based approach to managing highway infrastructure assets”. As part of this, it recommends a “reduced level of surface regularity” (UKRLG 2016, B.4.4.4 and B.5.4.6) where that aids the retention of trees. However SCC and Amey are insisting on adherence to an unusually high degree of regularity, e.g. in not allowing any displacement or omission of kerbstones.

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2.4 Asset value of Trees (£66m) has not been considered

The street trees have NOT been assessed by the Council or Amey for their asset values, £66m value of healthy trees have been condemned

An open letter circulated by Sheffield City Council in July 2016 (SCC 2016, 1, page 3, para 4) stated:

“A physical valuation, using one of the various methodologies available (i.e. CAVAT or i-tree) is not routinely undertaken as we are looking at managing a historically under maintained and under resourced tree stock and bringing it up to legislative and nationally recognised highway maintenance standards.”

This statement appears to be conflating two unrelated issues to justify neglect of one of them.

Nationally recognised standards bodies such as the UK Roads Liaison Group advocate the Trees & Design Action Group guidance (TDAG 2014) which does not rule out consideration of asset values. The UKRLG guidance regarding highway damage is discussed above.

One method of assessing asset value is using the CAVAT method (Capital Asset Value for Amenity Trees). Local Tree campaigners have arranged assessments themselves, both for individual trees (Neilan 2016) and for the city as a whole. The city-wide report produced in September 2017 by a Local Authority Tree Officer, Ian Dalton (2017, 1) shows that:

“the current asset value of the 448 trees examined, is at least £11,400,000. Extrapolating this figure out over the other (2,147 healthy) trees lost so far as a consequence of the Streets Ahead program in addition to the 448 street trees due to be removed, we have an estimated total value of at least £66,100,000 in lost assets.”

2.5 There is no evidence-based sustainable tree management strategy in place

Highway Tree Management Strategy is not fit for purpose and SCC have ‘lost’ key documents.

SCC and Amey have published a Streets Ahead 5 year Tree Management Strategy (Streets Ahead 2016, 1). Version 7 is available to the public. However no previous versions are available and SCC claim that they do not have copies of versions in use before 2016 (SCC 2017). There is evidence that substantial revisions were made in the first three versions. It is impossible to understand why copies have not been retained by SCC and Amey, and it certainly puts into question whether the document has actually been used from day to day. This is a matter for concern as the Strategy forms part of the Streets Ahead contract.

Since the strategy was made public, four years after the start of the contract, arboricultural experts have been highly critical. For example Brian Crane (2016, 1, Appendix C] said “I question whether much of it can be described as a ‘Strategy’ as it contains no overarching vision. The overall impression gained from the document is that trees are seen as a problem by the City Council, rather than as presenting opportunities for the betterment of the environment and urban life in general. There are ample data to support the value of trees in environmental, social and fiscal terms. These issues have not been addressed in the preparation of this document.”

Crane’s report goes on to criticise many detailed aspects of the strategy and say that the tree replacement criteria do not appear to have been observed in practice.

As no Landscape and Visual Impact Assessment has been carried out, there has been no assessment of the impact of urban tree felling of this scale.

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2.6. Misleading and confusing claims by SCC about reasons for the scale of the felling programme

Trail of confused and self-evidently untrue claims by councillors and officers about scale of and reasons for felling programme.

The ‘Streets Ahead’ contract between SCC and Amey is notable for a high degree of commercial secrecy, much greater than in comparable contracts elsewhere. This makes it impossible for members of the public to understand what is driving many of the decisions about street tree felling.

In addition, SCC have repeatedly cited vague and questionable data to support the fellings with a confusing variety of numbers. In particular they refer to a street tree survey (Elliott 2007) carried out by the Elliott Consultancy. Examples include:

“a large proportion of the mature and over-mature trees (75% of the stock) are now ready for replacement” - PFI Business Case 2008 (SCC 2008)

“Also included in a very long list are items like replacing half of the city’s 36,000 highway trees” - Interview with SCC Head of Highways, Steve Robinson (Transportation Professional 2012)

“An independent roadside tree survey for 2006/7 reported that around 75% of our trees were approaching the end of their natural life” - SCC Council Leader Julie Dore writing in a Sheffield Community Newspaper (Dore 2017)

Despite being used repeatedly by Streets Ahead when responding to complaints and enquiries from the public, these vague claims are completely unsupported by the Elliott survey. The full results of the survey are shown in the slideshow produced by Elliott (2007): no other report was produced or requested.

Elliott recommended very clearly that 1000-1241 street trees (3% of the total stock) were in need of replacement, and 4950-5191 (14%) needed some maintenance work. His use of the term ‘mature or over-mature’ had no relevance to tree condition as it includes all of the established street trees in the city as opposed to young or semi-mature trees.

Elliott did not distinguish between short-lived species and the big canopy trees and that may be a source of confusion for SCC. He talked about the implications for trees reaching the end of their lives but did not give time scales and again this may have led to misunderstanding.

In fact the 100-year old trees that make up the great part of the city’s stock of large canopy trees are generally healthy and have a ‘useful’ life, as defined by leading arboriculturalist Jeremy Barrell (2017), of 240 years before it would be desirable to replace them.

2.7. Lack of constructive negotiation despite growing public opposition and high public cost of dispute.

SCC have spent over £400,000 fighting against tree campaigners and put millions more at risk. There has been no serious negotiation and no willingness to consider alternatives

Over the past three years there has been a growing public opposition to tree felling and this has manifested itself in complaints, petitions, legal challenges and street protests. SCC has responded by seeking to control the situation with a variety of actions including large scale early morning felling raids, arrests, a complex and widely discredited consultation and review system (ITP) and injunctions against street protesters.

We estimate the cost of these actions to be in excess of £400,000 and the introduction of the Independent Tree Panel has put SCC at risk of more than £2m in claims from Amey for delays to the tree works (STAG Press Group 2017).

SCC has attempted to consult. The Highway Tree Advisory Forum, intended to be a regular event, met twice in 2015 but was then abandoned in favour of the ITP. This in turn was widely criticised for undemocratic and unreliable survey methods. There have been a number of meetings between SCC and STAG members.
and with other local groups but most people who have taken part have felt the SCC approach was not open or constructive enough to achieve anything. STAG has continued to offer meetings.

In particular Ms Gillian Adey, a retired Senior Civil Servant with extensive experience of Industrial Relations, who was asked by STAG to help with negotiations, has written a highly critical account of these meetings (Adey 2017) in her evidence to the High Court (Leeds 2017 - SCC V Fairhall and Others). She describes her disillusionment with the process, referring to ‘filibustering’ by SCC and said, “What became apparent was the Council wished to be seen to be engaging with STAG but had no intention of entering into any debate about the the issues involved or offering any concessions to bring the friction to an end. In fact on the latter two occasions they used the meetings as an opportunity to issue threats to the campaigners if protests did not desist. I have had years of experience with negotiations and recognise when the other side has no intention of entering into a meaningful debate. The meetings with SCC fall clearly into this category.”

At each new development, public opposition has grown and more experts from around the country have became involved in opposing the felling programme. The national media have taken a strong interest and well-known people across the political spectrum have expressed their distaste for the developments in Sheffield. So far SCC seem immune to criticism and little concerned at the costs they incur. We hope that a Tree Preservation Order and Injunction will give the Council pause to reflect and consider more constructive negotiations and perhaps be open to creative ideas about how to unlock the dispute.

**Part 3 - Applying the Amenity Criteria for a Tree Preservation Order**

Under Government planning guidance regarding TPOs (DCLG 2014) the following aspects should be taken into account:

- **Visibility**
  
  By their nature, roadside trees are highly visible, unlike many on private land. The great majority of these trees are on residential streets or main thoroughfares, in either case they are a significant part of the visible street ‘landscape’.

- **Size & Form**
  
  The trees are varied in species and form. However a large proportion of the remaining trees are large canopy trees, including Common Limes and London Planes. They make a very significant contribution to the landscape and transform the appearance of their streets, whether in avenues or as individual trees.

  There are some smaller trees affected such as cherries, but this includes at least one well-known landmark avenue of mature, well-established trees (Abbeydale Park Rise)

  A large number of the threatened trees form distinctive avenues. The avenues provide a substantial striking tree canopy: this form will be destroyed by the removal of so many threatened healthy trees. In many cases plans are for removal of a whole row of trees. These trees and roads, are therefore ‘significant’ and ‘unusual’ in their general size and form.

- **Rarity, Cultural or Historic Value**
  
  Many of the threatened trees have a significant historic value. Examples include:

  - trees planted as war memorials to former pupils of a number of local schools such as the Western Road WW1 Memorial Avenue and the Oxford Street memorial trees. These latter trees are believed to be one of the earliest WW1 memorials in the UK, planted in March 1917.
  
  - a three-mile long avenue of 110 year old Lime Trees on Rivelin Valley Road. This is the longest single-avenue of Limes in Europe. Felling has already commenced on this road.
● a significant number of trees are within the Nether Edge Conservation Area. The Sheffield City Council description of the NECA says (for example) "A defining characteristic of the area is the vistas framed by the trees along a number of its streets...the scale of villas, tree canopies and vistas combine to generate dramatic and expansive three-dimensional quality." (SCC Undated, 1)

● a number of notable old ash and oak trees, e.g. a 150 year old Sheffield boundary Oak on Vernon Road (due to be felled imminently on 16-17 October) and an extremely rare 120+ year old Elm tree: this is of national importance due to it being one of less than 1000 old elms (outside of cordon sanitaire zones in Brighton and Edinburgh) to survive the ravages of Dutch Elm Disease.

● A long avenue of large cherry trees on Abbeydale Park Rise, which has become a famous attraction in the city. People from a wide area visit to see the rich display of blossom in spring, and at Christmas when residents decorate the trees in the street with fairy lights.

● Contribution to, and relationship with, the landscape
The city's street trees are, naturally, diverse in character, ranging from classic avenues of big trees to smaller varieties and isolated specimens. However the consistent factor is that they all transform and soften the street landscape, bringing in a green canopy which has been shown to have great benefits to the health of residents and passers-by. While the big avenues are the most striking landscape features, isolated trees are particularly cherished by residents and their removal has a disproportionate effect.

● Future Potential as an Amenity
(i) The trees are nesting sites for a number of bird species
(ii) The life-span of many of these trees is from over 200 years (Sycamore & Ash) to over 400 years (Plane & Lime). The majority of the trees under threat are only around 80 to 100 years old. Destroying them now is a waste of more than half the trees’ potential benefits (Barrell 2017).
(iii) As mature trees or ‘survivors’ they have proven their ability to thrive in an urban environment. New plantings will not have the same degree of resilience and are vulnerable to failure during their early years. Replacing trees one-for-one is simply insufficient and will lead to a net reduction in the number of trees. With good aftercare, it is reasonable to expect a 10% failure rate in the first 3 years after planting. This can increase up to 65% in 10 years if ongoing care is inadequate (TDAG, undated). The choice of replacement species is also not in keeping nor fitting with the current street tree stock and Brian Crane (2016, 1, 3.2.1 & 3.2.5) has criticised the choice of some replacement species due to transfer of disease to newly planted trees. Replacing hundreds of mature trees with inappropriate saplings automatically reduces the amenity value of the street trees of Sheffield.
(iv) The growing understanding of the contribution urban planning makes to health and wellbeing means it is likely that the amenity value of the mature tree canopy will become much more significant in future. Retention of these mature, healthy street trees represents a significant benefit to the wellbeing of local people both now and for decades to come – but only IF retained.
(v) In recent years we have seen growing scientific evidence connecting street trees and residents’ health. This is quite distinct from living with trees in the general area. A large scale epidemiological study by University of Chicago indicates that a substantial tree canopy on a residential street is associated with physical and mental health indicators equivalent to being 7 years younger (Kardan et al, 2015). Effects were pro-rata with the amount of canopy so removal of large canopy trees will diminish residents’ health for several decades before new trees reach a comparable size.
Conclusion - Urgency and need for an immediate whole area Tree Preservation Order

The urgency of this request is due to the imminent felling of over 400 highly valued, generally healthy trees. Over 5000 street trees in Sheffield have been felled since 2012 but at least 400 are currently scheduled for immediate felling, including many of the most controversial healthy trees that are the subject of hot dispute between residents and SCC. Contractors are attempting to fell trees on a daily basis.

Felling has commenced on the classic Avenue of Rivelin Valley Road; the famous oak tree on Vernon Road is scheduled for 16-17 October, felling attempts have already been made in the Nether Edge Conservation Area, and trees in many other parts of the city are being lost on a daily basis.

The Streets Ahead project envisages more tree fellings in the 20 year ‘maintenance’ phase starting in 2018 so there is a continuing need to ensure good arboricultural management with conservation of valuable assets as a priority.

We believe that an area TPO should be put in place to ensure that these trees are placed under proper arboricultural management and to ensure that any future decisions on their management includes full consideration of their amenity value amongst others.

We hope that you appreciate the urgency of this situation, and look forward to receiving your response.

Yours sincerely

Mrs Rebecca Hammond
Co-chair, Sheffield Tree Action Groups
Address

Prof. Chris Rust
Co-chair, Sheffield Tree Action Groups
Address

Following pages
References
Photographs illustrating impact of tree loss.
References


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Yorkshire Post 27 September 2017,
Appendix 1: Photographs before and after street tree felling in Sheffield

*Humphrey Road, S8 7SE*
(actual images)

*Spurr Street, S2 3GY*
(actual images)

*Cotswold Road S6 4QY*
(actual images)
Sheffield Tree Action Groups request to DCLG for area Tree Preservation Order

**Abbeyfield Road, S4 7AY**

(actual images)

**Edmund Road, S2**

(actual images)