

Item No. 9.	Classification: Open	Date: 1 October 2019	Meeting Name: Planning Sub-Committee A
Report title:		TPO confirmation 113a Bushey Hill Road, London, SE5 8QQ	
Ward(s) or groups affected:		St Giles	
From:		Director of Planning	

RECOMMENDATION

1. That the provisional tree preservation order reference 528 be confirmed unamended.

BACKGROUND INFORMATION

2. A Tree Preservation Order (TPO) was served on 8 April 2019 following a request to fell a Lime tree within the Holly Grove Conservation Area.
3. The TPO protects two individual trees. Two objections have been received in respect of including Lime tree T1 in the Order.

KEY ISSUES FOR CONSIDERATION

4. To continue to have effect the TPO attached in Appendix 1 must be confirmed within six months from the date of being served. Should it not be confirmed the trees described in the schedule and shown in the plan can be removed without the need for the council's consent.
5. The TPO includes two individual trees which have been assessed as contributing to amenity and because of their value to screening or biodiversity.
6. The trees were assessed as attaining a score of 18 (out of a potential total 25) under the Tree Evaluation Method for Tree Preservation Orders (TEMPO), resulting in a decision guide indicating that making a TPO is definitely merited.
7. The tree locations are within a conservation area which affords protection from unauthorised works.
8. The confirmation of a TPO cannot be appealed. However, any subsequent refusal of an application for works to a TPO or imposition of conditions upon consent can be appealed to the Secretary of State via the Planning Inspectorate.
9. Anyone proposing to carry out works to a tree or trees subject to a TPO must seek permission from the local planning authority. This involves completing an application form identifying the trees, detailing the works proposed and explaining the reasons for the works. The council's planning officer will usually inspect the trees prior to making a decision and may recommend alternative works or refuse consent. If authorisation is given to fell a protected tree, a new

tree will usually be required to be planted as a replacement. However, this will in turn require a new TPO to be served.

10. If a tree protected by a TPO is felled, pruned or willfully damaged without consent, both the person who carried out the works and the tree owner are liable to be fined up to £20,000 through the Magistrates Court or, if taken to the Crown Court, an unlimited fine. There are exceptional circumstances, such as when a tree is dead, dying or dangerous, when permission is not required. However, in order to avoid the risk of prosecution advice must be sought from the council and five days notice given before carrying out any works (except in an emergency).

Policy implications

11. The law on Tree Preservation Orders is in Part VIII of the Town and Country Planning Act 1990 as amended and in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.
12. Section 197 of the Act imposes a duty on the local planning authority to ensure the preservation and protection of trees whenever appropriate.
13. London Plan Policy 7.21 Trees and woodlands states that trees and woodlands should be protected, maintained, and enhanced, following the guidance of the London Tree and Woodland Framework.
14. The draft New Southwark Plan P60 states that in exceptional circumstances removal of trees protected by TPO or conservation area status will be permitted where sufficient evidence has been provided to justify their loss. Replacement planting will be expected where removal is agreed. The replacement of TPO trees must take into account the loss of canopy cover as measured by stem girth and biodiversity value.
15. The current recommendation supports the relevant national legislation, London and draft Southwark policies to retain trees with amenity value

Objection to the order

16. Objections have been received from the ground and first floor residents of a property adjacent to where a pollarded mature Lime tree T1 is located, to the front of 113a Bushey Hill Road.
17. The objection relates to damage to a property at 113 Bushey Hill Road, where no TPO trees are located.
18. The basis of the objection is that the tree is causing damage to the property.
19. However, the evidence provided to substantiate the objection states that “the damage observed is minor and of no detriment to the structural integrity of the property.” No replacement planting is proposed to mitigate its loss or harm to amenity.
20. The law requires that in order for a TPO to be served the amenity must be assessed. The TEMPO methodology has in this instance been applied correctly taking into account any evidence of trees being a nuisance based on the available evidence.

21. The Lime trees are two of the few remaining street front trees remaining on Bushey Hill Road. The trees have been regularly pollarded, but despite being within the Holly Grove Conservation Area, there is no record of any application being made to or approved by the council; in contravention of Sec.211 of the Town and Country Planning Act 1990 (as amended). The trees are highly visible from the public realm and add to the overall character of the dwelling by framing the property. The trees are a remnant of the former historic streetscene as surveyed on the 1879 map and therefore have significant heritage value. A photograph of the trees is attached at Appendix 4.
22. At this stage it is considered that there is insufficient evidence firstly to establish that the tree has caused any damage, no crack monitoring has been undertaken, nor root identification proffered. Furthermore, the submitted report states categorically that the damage is both minor and to no structural detriment. Secondly that removal of the tree rather than some lesser step is required or reasonable. Indeed, there is no reason that the tree could not be continued to be pollarded on a cyclical basis under the protection of a TPO.
23. No consideration has been given to alternative solutions such as why pruning may not be appropriate in order to avoid the need for felling, or the opportunity to install a root barrier.
24. Should the recommendation be accepted and the order confirmed then an application to carry out works can be submitted in the usual way with consent or refusal considered on the basis of any further evidence provided.
25. Any proposed works to protected trees are consulted upon and responses are taken into account when determining the application.

Consultation

26. The TPO was served by hand to all affected properties and included in the TPO register which is publically available online. Once confirmed the planning and land charges registers are updated.

Conclusion

27. Making a TPO affects the ability of a tree owner to manage and deal with the tree as they see fit without recourse to the Council. The trees in question must be of sufficient quality to be considered worthy of protection to justify the imposition on the owner that a TPO constitutes. Let it be noted that the tree has been previously reduced and maintained in the past without seeking prior approval from the Council in contravention of Sec.211 of the Town and Country planning Act 1990 (as amended), a TPO is warranted to ensure compliance by the trees owners.
28. It is recommended for the reasons set out above that all trees within the TPO are of sufficient quality to justify TPO status.
29. In this instance it is claimed within two objections that damage has occurred to one property and that the subject tree is the cause of that damage. It is claimed that it cannot logically be in the public interest to preserve a tree that causes damage to property.

30. In an urban or suburban setting most trees will have the ability at some stage in their lifespan to potentially affect the built environment around them. A degree of proportionality has to be exercised as to quite what the nature of that impact is and what might constitute mitigation of any proven impacts.
31. The objected to tree is claimed to impact an adjoining property, but that has not been proved, nor has it been proved that actions short of removal of the tree would not resolve the matter. On the basis of the information available it is recommended to confirm the TPO.
32. Whilst there would be no right of appeal against confirmation, the effected parties can apply subsequently with further evidence to carry out works to the objected to tree should that be considered necessary. This is considered to be sufficient protection of the rights of all parties concerned and their ability to enjoy and protect their property.
33. A further TPO application to reduce the two trees was submitted on 19 June 2019 and on 25 July 2019 consent was GIVEN to carry out the following works:
T1 and T2 Limes - reduction every 1 to 2 years to remove epicormic growth back to previous pollard points; for a period not exceeding 6 years.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

34. The original Tree Preservation Order was made on 8 April 2019 and this protects the trees for up to six months unless confirmed and made permanent.
35. The report refers to the duty imposed upon councils by virtue of section 197 of the Town and Country Planning Act which requires the authority to ensure the preservation and protection of trees where appropriate.
36. In this instance, two objections to the Order have been received.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
TPO guidance https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas#confirming-tree-preservation-orders	Online	NA
TEMPO guidance http://www.flac.uk.com/wp-content/uploads/2014/12/TEMPO-GN.pdf	Online	NA
Southwark Council TPO information http://www.southwark.gov.uk/environment/trees/tree-preservation-orders-and-conservation-areas	Online	NA
Southwark TPO register https://geo.southwark.gov.uk/connect/analyst/mobile/#/main?mapcfg=Southwark%20Design%20and%20Conservation&overlays=TPO%20zones	Online	NA

APPENDICES

No.	Title
Appendix 1	Provisional TPO

AUDIT TRAIL

Lead Officer	Simon Bevan, Director of Planning	
Report Author	Liam Bullen, TPO Surveyor	
Version	Final	
Dated	11 September 2019	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	18 September 2019	