

Item No. 8.	Classification: Open	Date: 1 October 2019	Meeting Name: Planning Sub-Committee A
Report title:		TPO confirmation 156 Peckham Rye, London, SE22 9QH	
Ward(s) or groups affected:		Goose Green	
From:		Director of Planning	

RECOMMENDATION

1. That the provisional tree preservation order reference 533 be confirmed unamended.

BACKGROUND INFORMATION

2. A tree preservation order (TPO) was served on 14 May 2019 following an application reference 19/AP/1084 to fell a rear garden Field Maple tree within The Gardens Conservation Area.
3. Prior to the site being sold, a request to assess both the Maple and another Ginkgo tree at 156 Peckham Rye for protection with a TPO was made by the former owners in September 2018. However, given the trees' protected status within a conservation area it was not considered expedient to complete this assessment pending completion of the ongoing TPO survey review.
4. The TPO protects an individual tree. Two objections have subsequently been received, which according to the council's standing orders must be considered at planning committee before the order can be confirmed.

KEY ISSUES FOR CONSIDERATION

5. The presumption exists that trees within conservation areas greater than 7.5cm stem diameter should be retained where they are assessed to contribute positively to the character and appeal of the area, unless substantiating evidence is provided as to why they must be removed.
6. To continue to have effect the TPO attached in Appendix 1 must be confirmed within 6 months from the date of being served. Should it not be confirmed the tree described in the schedule and shown in the plan revert to the lesser protection afforded by its status within the conservation area.
7. The TPO includes an individual tree which has been assessed as contributing to amenity and because of its value to screening and biodiversity.
8. The tree was assessed as attaining a score of 15 (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.
9. 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.

10. 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.
11. 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

12. 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.
13. Section 197 of the Act imposes a duty on the local planning authority to ensure the preservation and protection of trees whenever appropriate.
14. 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.
15. 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.
16. The current recommendation supports the relevant national legislation, London and draft Southwark policies to retain trees with proven amenity value.

Objection to the Order

17. Objections have been received from the owner at 156 Peckham Rye and a neighbour at 158 Peckham Rye.
18. The objections relate to alleged damage to garden paving, a rear garden brick outbuilding adjoining 154 Peckham Rye and a garden wall adjoining 158 Peckham Rye.
19. The basis of the objections are that the tree is causing damage to the property whilst also causing a nuisance due to obstruction of views. The tree is

furthermore alleged to be in an unsafe condition and of minor significance to amenity, with a limited life expectancy and poor public visibility.

20. Although the property is grade II listed the detached single storey outbuilding, rear extension and garden walls are not included within the listing description and therefore have lesser weight. There is no evidence of damage to these features associated with the presence of trees.
21. Following a request to provide an arboricultural and/or engineering report insufficient evidence has been provided to substantiate the need for removal. No replacement planting is proposed to mitigate its loss or harm to amenity.
22. 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.
23. The Field Maple is in a reasonable condition without structural defects or signs of decay, with a safe useful life expectancy of at least 40 years. The specimen is a large size for its species, forming part of a group of mature rear garden trees which can be seen from Wellington Mews, a publically accessible space adjacent to 150 Peckham Rye.
24. Consent has previously been given to crown reduce the tree by up to 2m in January 2011 and November 2016 so that it continues to provide valuable amenity whilst abating nuisance or contact with adjacent property. Due to its multi stemmed form it appears the tree was managed as a high pollard at an early stage of its life, which is assessed at 60cm diameter to be at least 100 years old.
25. Due to the stem size of the crown, management as a pollarded tree is not now considered acceptable. This is due to large diameter wounds and risk of premature decline and death resulting in disease and decay which would result from this type of management, together with significant loss of amenity. A photo of the tree is included within the TPO at Appendix 1.
26. A further objection has been raised that the application to fell the tree was not authorised by the tree owner. However, according to the relevant legislation and guidance anyone with an interest can apply for works to protect trees, with or without the permission or knowledge of the tree owner. Any works which are subsequently consented by the local planning authority must then have the permission of the tree owner.
27. At this stage it is considered that there is insufficient evidence to establish that the tree has caused any damage; no crack monitoring has been undertaken, nor root identification provided. An assessment on site indicates that damage to paving may be readily repaired without the need for tree removal, which is considered disproportionate and unnecessary. There is no reason why the tree could not continue to be maintained on a regular basis under the protection of a TPO.
28. No consideration has been given to alternative solutions such as why pruning may not be appropriate in order to avoid the need for felling.

29. 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.
30. Any proposed works to protected trees are consulted upon and responses are taken into account when determining the application.

Consultation

31. The TPO was lawfully served to the property and affected parties and included in the TPO register which is publically available online. Once confirmed the planning and land charges registers are updated.

Conclusion

32. Making a TPO affects the ability of a tree owner to manage and deal with the tree as they see fit. 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. It is 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. A TPO is warranted to ensure ongoing compliance by current and future owners.
33. It is recommended for the reasons set out above that the tree is of sufficient quality to justify TPO status.
34. 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.
35. 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 the extent of that impact and what might constitute mitigation of any proven damage or nuisance.
36. Whilst there is no right of appeal against confirmation, the affected parties can apply with further evidence to carry out works to the 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.
37. Should the provisional TPO not be confirmed, any subsequent conservation area application to remove or pollard the tree unnecessarily and without substantiating evidence will result in the re-serving of a TPO.
38. It is therefore recommended that in order to avoid repeated recourse to a TPO that the provisional order is confirmed unamended. Any refusal of consent for works to the tree in future may then be appealed to the Planning Inspectorate for an independent assessment and decision to be made by that body in the usual way.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

39. The original tree preservation order was made on 14 April 2019 and this protects the trees for up to six months unless confirmed and made permanent.
40. 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.
41. 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	Oliver Stutter, Planning Officer	
Version	Final	
Dated	16 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	