

Item No. 7.	Classification: Open	Date: 17 July 2018	Meeting Name: Planning Sub-Committee A
Report title:		TPO confirmation: beech tree at rear of 29-33 Mount Adon Park	
Ward(s) or groups affected:		Dulwich Hill	
From:		Director of Planning	

RECOMMENDATION

1. That the provisional TPO reference 519 be confirmed unamended.

BACKGROUND INFORMATION

2. A tree preservation order (TPO) was served on 15 March 2018 following a request for information by a tree surgeon in respect of a beech tree that was unprotected and could be felled.
3. The TPO protects twelve individual trees and two groups. An objection has been received in respect of including beech tree T4 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 a number of individual trees and tree groups 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 22 (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 not within a conservation area or on council owned land which would otherwise afford protection from removal.
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 198 of the Act empowers a local planning authority to make tree preservation orders where it is expedient in the interests of amenity to preserve trees or woodlands in their area.
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. An objection has been received from an agent of insurers of a property adjacent to where a large mature beech tree T4 is located, to the rear of 29-33 Mount Adon Park.
17. The objection relates to damage to a property at 369 Upland Road, where no TPO trees are located.
18. The basis of the objection is that the assessment of amenity (TEMPO) is incorrect, as the Beech tree is allegedly causing an actionable nuisance.
19. However, no evidence has been provided to substantiate the objection and 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 beech tree is a good example of the species being almost fully mature with an estimated height of 18 metres and a canopy spread of 8 metres. It sits at the end of a residential garden, contributing to the verdant character of this part of Dulwich; it is visible from the gardens of 365 to 383 Upland Road, 17 to 37 Mount Adon Park 4 and 451 Lordship Lane. Near to it are trees Yew T2, Robinia T3 and Maple T12 that together with this tree make a significant contribution to the biodiversity of the area including forage and nesting habitat.
22. At this stage it is considered that there is insufficient evidence firstly to establish that the tree has caused any damage, or secondly that removal of the tree rather than some lesser step is required or reasonable.
23. The tree is growing up slope from the adjoining property and behind a retaining wall which would presuppose the absence of roots. Other causes of damage have not been discounted. 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.
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 a single objection 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.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

33. The original tree preservation order was made on 15 March 2018 and this protects the tree for up to six months unless confirmed and made permanent.
34. The report refers to the legislative background to the general duties of local planning authorities with regard to trees and the power pursuant to Section 197 of the Town and Country Planning Act 1990 by which the authority may make tree preservation orders where it is expedient in the interests of amenity to preserve trees or woodlands in their area. .
35. Regulation 7 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 provides that the authority shall not confirm an order which they have made unless they have first considered objections and representations made in respect of it and not withdrawn.
36. In the present case, an objection to the inclusion of one of the trees (T4) has been made. Regulation 7(2) provides that a tree preservation order may be confirmed with or without modifications. However, members will note the reasons given in the report for the retention of T4 within the Order (reference 519).
37. Part 3F of the council's constitution provides that planning sub-committees shall consider the confirmation of tree preservation orders which are the subject of a 'sustained objection', defined as one that is maintained despite an attempt by officers to resolve the objection or which officers consider incapable of resolution by negotiation.

Legislative requirement

38. The TPO lapses on 15 September 2018 if not confirmed.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
TPO guidance	Online	Oliver Stutter 020 7525 2090
Link: https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas#confirming-tree-preservation-orders		
Southwark Council TPO information	Online	Oliver Stutter 020 7525 2090
Link: http://www.southwark.gov.uk/environment/trees/tree-preservation-orders-and-conservation-areas		
Southwark TPO register	Online	Oliver Stutter 020 7525 2090
Link: https://geo.southwark.gov.uk/connect/analyst/mobile/#/main?mapcfg=Southwark%20Design%20and%20Conservation&overlays=TPO%20zones		

APPENDICES

No.	Title
Appendix 1	Provisional TPO
Appendix 2	TEMPO methodology

AUDIT TRAIL

Lead Officer	Simon Bevan, Director of Planning	
Report Author	Oliver Stutter, Senior Planner Urban Forester	
Version	Final	
Dated	10 May 2018	
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
Gavin Blackburn, Planning Enforcement	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team	9 July 2018	