

Item No. 8.	Classification: Open	Date: 19 November 2019	Meeting Name: Planning Sub-Committee A
Report title:		TPO confirmation 1-8 Mountbatten Court, 153a Rotherhithe Street, London, SE16 5QL Front of EL Sub Station S/O Horatio Court 151 Rotherhithe Street, SE16 5QQ Land adjacent 1-8 Mountbatten Court, Rotherhithe Street, SE16 5QL	
Ward(s) or groups affected:		Rotherhithe	
From:		Director of Planning	

RECOMMENDATION

1. That the provisional TPO reference 539 be confirmed unamended.

BACKGROUND INFORMATION

2. A Tree Preservation Order (TPO) was served on 1 July 2019 following a request from two local residents. The basis of the request was made concerning a perceived threat to one of the trees whilst remarking on the benefits these trees afford the wider community.
3. The TPO protects three individual trees and one Group of trees. One objection has subsequently been received, which according to the council's standing orders must be considered at planning committee before the order can be confirmed.
4. The subject site forms part of a former Bellway Development built during the late 1990s, with associated landscaping including tree planting as part of an approved scheme. Given their current size and date of planting, the resultant trees were planted as early mature specimens
5. The ownership of the site has subsequently been taken over by residents as a self managed freehold held by Brunel Point Management Company Ltd.

KEY ISSUES FOR CONSIDERATION

6. 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 have no other statutory protection.
7. The TPO includes three individual trees and one group of trees previously thought to be within public realm. These trees have been assessed as contributing to amenity and because of its value to screening and combatting pollutants.

8. The trees were assessed as attaining a score of 21 (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. One Objection has been received from the management company at Brunel Point.
18. The objection relates to putting an unreasonable financial burden on the

residents and will cause repeated health and safety dangers over the years.

19. Officers have visited the property and noted the following observations: The site incorporated within the land title boundary comprises one group of trees with a mix of mature London Plane, Alder and Mountain Ash, within the car park to Mountbatten Court there is one mature London Plane and one Mountain Ash, vacant tree pits were noted within the car park with cars parked across these pits. Some lifting was noted to the brick paving slabs within the car park associated with surface rooting of one mature London Plane. A further mature London Plane is located to the side of a substation at Horatio Court.
20. Officers have advised the management company of suitable remedial action with respect to the car park and the tree. Re-surfacing has since been undertaken at the site
21. 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.
22. The majority of the remaining trees are mature and show few signs of defects. The London Planes and Alder in particular are highly visible from the highway
23. No application prior to 2019 has been received by the council in relation to these trees.
24. Photos of the trees are included within the TPO at Appendix 1.
25. There is no reason why the tree could not continue to be maintained on a regular basis under the protection of a TPO.
26. 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.

Consultation

27. The TPO was lawfully served to the owners of the trees and included in the TPO register which is publically available online. Once confirmed the planning and land charges registers are updated.

Conclusion

28. 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 one stem of the tree has been previously reduced 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.
29. It is recommended for the reasons set out above that the trees are of sufficient quality to justify TPO status.
30. In this instance it is claimed within one objection that the TPO places an

unreasonable financial burden on the residents and will cause repeated health and safety dangers over the years.

31. These trees are highly visible from the public realm. Their designation as a TPO does not confer any extra financial burden than that which originally existed in so far as any application for works is free. Any necessary works themselves would still be undertaken and paid for by a responsible and prudent tree owner, as outlined within an arboricultural survey or report.
32. Upon confirmation of HM Land Registry title deeds it was found that all of these trees were in private ownership.
33. These trees were proposed for protection by two separate residents who have provided legitimate grounds for consideration for a Tree Preservation Order.
34. The initial planting of these trees in their current location were part of an approved scheme built by Bellway Homes in order to provide amenity.
35. 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.
36. Should the provisional TPO not be confirmed, there would be no statutory protection conferred on these trees.
37. It is therefore recommended that in order to avoid any unnecessary removal of these prominent trees, the Provisional Tree Preservation Order be confirmed, unamended.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

38. The original Tree Preservation Order was made on 1 July 2019 and this protects the trees for up to six months unless confirmed and made permanent.
39. 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.
40. In this instance, one objection to the Order has been received.

REASONS FOR URGENCY

Legislative requirement

41. The TPO lapses on 1 January 2020 if not confirmed.

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, Surveyor, Planning	
Version	Final	
Dated	5 November 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		7 November 2019