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Item No. 7.2	Classification: OPEN	Date: 4 March 2020	Meeting Name: Planning Sub-Committee B
Report title:		TPO 551 confirmation 157 Dunstons Road, SE22 0HB	
Ward(s) or groups affected:		Dulwich Hill	
From:		Director of Planning	

RECOMMENDATION

1. That the provisional TPO reference 551 be confirmed unamended.

BACKGROUND INFORMATION

2. A Tree Preservation Order (TPO) was served on 2 October 2019 following a recommendation to fell in relation to a Subsidence report prepared by MWA on behalf of Crawford & Company Adjusters; as well as, the perceived threat of development from permission granted for the erection of a new two storey two bedroom dwelling house in the rear garden of 120A Goodrich Road, reference 17/AP/3098.
3. Council officers have proposed a 30% reduction rather than fell on the basis of distance from the subject damage to property, approval for a new build within the vicinity of the tree and associated root loss and the impact of other closer vegetation and contributory factors within the objector's land and property. This has been well received by the loss adjusters and their arboricultural consultant, although, to date, the objector has not retracted their objection, nor has any formal application for works been received by the Council.
4. The TPO protects two individual 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.
5. The site is not located within a Conservation Area.

KEY ISSUES FOR CONSIDERATION

6. The presumption exists that trees subject to a Tree Preservation Order 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.
7. 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.
8. The TPO includes two individual trees which have been assessed as contributing to amenity and because of its value to screening and biodiversity.

9. The tree was assessed as attaining a score of 17 (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.
10. 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.
11. 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.
12. 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

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

Objection to the Order

18. One objection has been received from a neighbour.
19. The basis of that objection, is that the neighbour has for over 15 years been suffering from subsidence and that the Lime trees (subject of a Provisional TPO)

are the cause of damage.

20. The basis of the objection is that the Lime trees are causing damage to the property.
21. The neighbour is concerned that until the trees have been removed or substantially cut back, that the insurance company will not make any repairs to the property.
22. Following a request to provide an arboricultural and/or engineering report relating to the alleged damage insufficient evidence has been provided to substantiate the need for removal. No replacement planting is proposed to mitigate the loss of trees or harm to amenity.
23. The submitted arboricultural report undertaken by MWA on the 15 August 2018 recommends the removal of all trees within 15m of the dwelling (TG1, comprising Ash, Elder and Sycamore), the felling of one Lime, T6 (covered by the Tree Preservation Order), it was advised that trees T1 to T5 not to be allowed to exceed current dimensions.
24. Site investigations have positively identified Lime and only Lime roots. Despite this all of the trees within Tree Group 1 have been removed at the rear of 157 Dunstons road, a shrub boundary has been removed, T3 a Plum has been removed and trees T1 and T2, a Cypress and an Apple will be lost to the approved development of a 2 storey house upon construction.
25. It should be noted that two mature Limes exist side by side and are protected by the order, however the submitted arboricultural report refers to only one.
26. Whilst roots of live appearance may be located in close proximity to a building this does not always equate to vegetative related subsidence.
27. Furthermore other contributory factors, including differential foundations, internal alterations, point loading and a lack of lateral restraint have not been fully investigated.
28. Crack monitoring has shown recovery at the passage area between the kitchen and bathroom. This is the only internal monitoring data supplied to the council.
29. This would indicate that any remedial works which have so far taken place have been effective.
30. Elsewhere, crack monitoring relates solely to an external retaining wall which does not form part of a habitable structure and may be failing due to poor design.
31. Level monitoring had not been undertaken at time of serving the Tree Preservation Order, in line with best practice for assessing claims in relation to vegetative related subsidence.
32. The Lime trees are located 18 metres from the subject property with the base of the tree 2.7 metres higher than the ground level of the property. Other trees within close proximity to the property have or are due to be removed.
33. A scheme, submitted by the objector (17/AP/0398) for the erection of a two storey property with lower ground floor has been approved by the council. The

construction of which will result in major root severance of the two Limes and form an effective barrier between the trees and the objector's property.

34. The loss adjusters for the objector have since accepted the council's proposal for a 30% lateral reduction and we await a formal application on that basis.
35. Communication received by the council on the 18 November 2019 states: "Please note our interest in the 30% reduction proposal providing we provide you with the required evidence to demonstrate the influence of the Lime tree (T6). We are currently in the process of obtaining level monitoring data and once we are in receipt of some comparative readings, we will look at submitting the application to the Council for a 30% reduction to the implicated Lime tree once we have obtained the required amount of evidence to support an application (T6)"
36. At this stage it is considered that there is insufficient evidence to establish that the tree is the primary cause of any damage; level monitoring is continuing. As such the need for tree removal, 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.
37. Little consideration has been given to alternative solutions such as why pruning may not be appropriate in order to avoid the need for felling.
38. The implementation of an approved development will effectively create a root barrier through the severance of roots.
39. 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.
40. The Lime trees are in a reasonable condition without structural defects or signs of decay, with a safe useful life expectancy of at least 40 years. The specimens can be seen from Goodrich Road and Donkey Alley.
41. The council would not unreasonably withhold approval of suitable works in order for these trees to continue to provide valuable amenity whilst abating nuisance or contact with adjacent property
42. Photos of the trees are included within the TPO at Appendix 1.
43. 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.
44. Any proposed works to protected trees are consulted upon and responses are taken into account when determining the application.

Consultation

45. 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

46. 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.
47. It is recommended for the reasons set out above that the tree is of sufficient quality to justify TPO status.
48. In this instance it is claimed within one objection that damage has occurred to one property and that the subject tree is the cause of that damage.
49. 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.
50. 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.
51. Should the provisional TPO not be confirmed, there are no legal obstructions to removing these trees.
52. 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

53. The original Tree Preservation Order was made on 2 October 2019 and this protects the trees for up to six months unless confirmed and made permanent.
54. 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.
55. In this instance, two objections to the Order have been received.

Legislative requirement

56. The TPO lapses on 2 April 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, TPO Surveyor	
Version	Final	
Dated	20 February 2020	
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	21 February 2020	