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Item No. 7.	Classification: Open	Date: 9 June 2020	Meeting Name: Planning Sub-Committee B
Report title:		TPO confirmation Land Bounded by 1-15 Alleyn Road, SE21, Loggetts, Morkyns Walk and 43 - 49, 61,63 and 69 Alleyn Park, London, SE21	
Ward(s) or groups affected:		Dulwich Wood	
From:		Director of Planning	

RECOMMENDATION

1. That the provisional TPO reference 582 be confirmed unamended.

BACKGROUND INFORMATION

2. A Tree Preservation Order (TPO) was served on 26 February 2020 following an initial request made by the Dulwich Estate to place a TPO on a rear garden Black Poplar situated within the boundary of a property on Alleyn Road.
3. Upon inspection of the site and the wider area, which falls within the Dulwich Estate Scheme of Management but outside of the Dulwich Village Conservation Area; a variety of prominent trees both to the rear and front gardens of properties along Alleyn Park and Alleyn Road were identified and considered for inclusion within the council's register of protected trees.
4. In order to provide immediate protection to these trees it was prudent to place four temporary Area TPOs to cover the entirety of these roads which fall outside of the Dulwich Village Conservation Area.
5. It was the intention to conduct a thorough site survey to identify the individual trees which are of high merit; however, since lockdown measures were introduced this has not been possible prior to the requirement to confirm the order in its unamended state.
6. It is advised that once lockdown measures are relaxed, a thorough site survey be undertaken and a confirmed order varied to depict individual trees subject to the order with the schedule updated accordingly.
7. The TPO protects a mixture of deciduous and coniferous mature trees, including Ash, Willow, Poplar, Horse Chestnut, Sycamore, Cedar and Lime.
8. One communication expressing support and one letter of objection have subsequently been received, which according to the council's procedure rules must be considered at planning sub-committee (Part F, paragraph 20 of the constitution), before the order can be confirmed.

KEY ISSUES FOR CONSIDERATION

9. 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.
10. The TPO includes prominent trees many of which would date back to the development of the large Victorian villas and later early Edwardian properties which are a feature of these roads, built upon previous woodland pasture.
11. These trees have been assessed as contributing to amenity and because of its value to screening and combatting pollutants, which are particularly high in the area given the proximity to Croxted Road and the Paxton Green roundabout.
12. The trees were 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 merited.
13. 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.
14. 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.
15. 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

16. 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.
17. Section 197 of the Act imposes a duty on the local planning authority to ensure the preservation and protection of trees whenever appropriate.
18. 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.
19. 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.

20. The current recommendation supports the relevant national legislation, London and draft Southwark policies to retain trees with proven amenity value.

Objection to the Order

21. One objection to the order has been received from a local resident.
22. The objection relates to the fact that these trees fall under the control of the Dulwich Estate Scheme of Management and that a License is required for any works to trees.
23. The Scheme of Management is enfranchised by the Leasehold Reform Act 1967 (as amended) and The Leasehold Reform Housing and Urban Development Act 1993 Scheme of Management
24. Under Section 6 (b) of the Scheme of Management states “Without the prior consent of the Managers: (i) no trees of any kind (other than fruit trees shrubs and seedlings) at any time growing on any enfranchised property shall be lopped topped cut down destroyed or removed.”
25. Section 8 of the Scheme of Management identifies the method by which breaches are dealt with.

8. (b) Any owner of an enfranchised property to whom notice of any breach of the obligations imposed by the Scheme shall be given by the Managers shall if in default be bound to commence to make good such breach within three months after service of such notice and thereafter proceed diligently with the work and in default thereof and whether or not there shall be any other person also liable the Managers and any persons authorised by them may enter the enfranchised property and take such steps and carry out such works as the Managers shall reasonably think necessary to make good the breach

(c) All reasonable costs and expenses incurred under sub-clause (b) of this clause by the Managers in case of default of the owner shall be recoverable by them and shall be charged upon the enfranchised property.
26. The trees are not located within a Conservation Area, and are afforded only temporary protection by virtue of the Scheme of Management.
27. Even despite the provisions of the Dulwich Estate Scheme of Management there is no reason why the trees could not continue to be maintained on a regular basis under the protection of a TPO.
28. Sections 197 through to 214 of the Town and Country Planning Act are specifically designed for the protection of trees. Section 197 placing upon the council, a statutory duty to preserve and protect trees, where appropriate.
29. The serving of a TPO affords these trees the highest level of protection available and places a greater duty on the tree owner to provide overwhelming evidence in support of any removal. Where removals are conducted unlawfully, the

provisions of S.210 of the Town and Country Planning Act allow for the council to enforce, and where appropriate, prosecute suspected breaches, seeking suitable compensation for the loss in amenity afforded by the unlawful removal of any tree.

30. Officers have visited the area and noted the following observations:

The site incorporated within the area boundary comprises a mixture of young ornamental and mature native and exotic species. These trees contribute both to the setting of the properties within the area and also provide benefits to the wider environment.

31. To date, officers have received four Licences and five enquiries for works to trees covered by these Area TPOs, including in relation to subsidence claims, dead and diseased trees and with respect to development.
32. 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.
33. 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.
34. It is advised that once lockdown measures are relaxed, a thorough site survey be undertaken and a confirmed order varied to depict individual trees subject to the order with the schedule updated accordingly.

Letters of Support

35. One communication in support of the TPO was received by the council stating: "Thanks for the letter about the planned TPO for Alleyn Park and Alleyn Road, which we welcome."

Consultation

36. 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

37. It is recommended for the reasons set out above that the trees are of sufficient quality to justify TPO status.
38. In this instance it is claimed within one objection that the TPO is unnecessary as the trees in question are already subject to the Dulwich Estate Scheme of Management. However this affords these trees no more than a 'temporary' protection similar to that conferred upon trees within a Conservation Area.
39. These trees are highly visible from the public realm, they contribute not only to the verdant nature of their setting but also confer benefit to the wider community both in the uptake of pollutants and the reduction in direct precipitation and

counter the urban 'heat island' effect through shade cast.

40. 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.
41. Should the provisional TPO not be confirmed, there would be no statutory protection conferred on these trees.
42. It is therefore recommended that in order to afford greater legislative protection to these prominent trees, the Provisional Tree Preservation Order be confirmed, and unamended, at this stage.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

43. The original Tree Preservation Order was made on 26 February 2020 and this protects the trees for up to six months unless confirmed and made permanent.
44. 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.
45. In this instance, one objection to the Order has been received.

Legislative requirement

46. The TPO lapses on 26 August 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	Planning enquiries telephone: 020 7525 5403 Planning enquiries email: planning.enquiries@southwark.gov.uk Council website: www.southwark.gov.uk
TEMPO guidance http://www.flac.uk.com/wp-content/uploads/2014/12/TEMPO-GN.pdf	Online	As above
Southwark Council TPO information http://www.southwark.gov.uk/environment/trees/tree-preservation-orders-and-conservation-areas	Online	As above
Southwark TPO register https://geo.southwark.gov.uk/connect/analyst/mobile/#/main?mapcfg=Southwark%20Design%20and%20Conservation&overlays=TPO%20zones	Online	As above

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	15 May 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		20 May 2020