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<b>Item No.</b> 7.2	<b>Classification:</b> Open	<b>Date:</b> 13 September 2021	<b>Meeting Name:</b> Planning Sub-Committee B
<b>Report title:</b>		TPO 619: 63-65 Warner Road, London SE5 9NE	
<b>Ward(s) or groups affected:</b>		Camberwell Green	
<b>From:</b>		Director for Growth and Planning	

## RECOMMENDATION

1. That the provisional TPO reference 619 be confirmed, unamended.

## BACKGROUND INFORMATION

2. A Tree Preservation Order (TPO) was served on the 22 March 2021 following a request to intervene against the removal of a boundary tree under joint ownership.
3. Officers were informed of tree removals being undertaken at 63 Warner Road by the residents at number 65. The resident had contacted the Council over concerns of breaching wildlife legislation pertaining to nesting habitats after first speaking with the Police and being directed to the local authority.
4. Officers attended site to investigate and found tree surgery works being undertaken. Whilst the works did not infringe wildlife legislation, nor was the removal of two large Leylandii at 63 Warner Road of concern, as the configuration of these trees would likely have come under High Hedges legislation (Part 8, of the Anti-Social Behaviour Act 2003); a boundary Sycamore tree of moderate amenity potential was identified.
5. A TEMPO (Tree Evaluation Method for Preservation Orders) assessment was undertaken and the tree considered worthy of protection.
6. The order covers a tree which is highly visible from public realm from two roads, of fair structural integrity and with an expected safe useful life expectancy in excess of 40 years.
7. Two objections to the TPO 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

8. 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 trees described in the schedule and shown in the plan would continue to be afforded the temporary statutory protection of the Conservation Area designation.
9. The tree was assessed as attaining a score of 18 (out of a potential total 25) under the Tree Evaluation Method for Tree Preservation Orders (TEMPO), resulting in a decision guide indicating that the making of a TPO is 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 198 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 G7 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. Emerging policy of the 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. Two Objections have been received from local residents.
19. The objections propose that the tree has outgrown its location, is causing damage and prevents the building of an extension. That "This tree is hidden in between two properties and is of no significant value to the community as it cannot be seen easily from the main road and is of no significant value to the area". Further, that the garden has been neglected for over 20 years which is why the trees have become overgrown from poor management. That the tree is asymmetrical with poor multi-stemmed form and will hinder new planting proposals and landscape plans in order to enhance the garden.
20. Officers are of the understanding that the property was purchased at auction on the 18 February 2021, by the objector, and that a large glazed conservatory has since been built at the property with the TPO tree in situ, but; without the requisite planning permission being sought.
21. Retrospective Planning Application 21/AP/1817 was refused and the unauthorised works are subject to enforcement investigation 21/EN/0141.
22. The decision notice stating that the unauthorised works should be removed and the land restored back to its original condition before these unauthorised works took place. Enforcement action may be taken without further warning.
23. The tree is highly visible from both Valmar and Crawford Roads. Trees are a material consideration for planning, as now enshrined under paragraph 131 of the National Planning Policy Framework (2021).
24. No conclusive evidence has been provided by the objector in support of the claim that the tree is causing damage to the property. .Emerging policy P60 provides clear guidance that the loss of mature trees must be justified.
25. Given that the tree has previously been reduced, there is no reason why the trees could not continue to be maintained on a regular basis under the

protection of a TPO.

26. The serving of a TPO affords this tree the highest level of protection available and places a greater duty on the tree owner to provide overwhelming evidence in support of any removal.
27. 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.
28. 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.
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.

## **Consultation**

30. 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**

31. It is recommended for the reasons set out above that the tree is of sufficient quality to justify TPO status.
32. The tree contributes not only to the verdant nature of their setting but also confers 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
33. 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.
34. Should the provisional TPO not be confirmed, the tree would not be protected.
35. It is therefore recommended that in order to afford greater legislative protection to this tree, the Provisional Tree Preservation Order be

confirmed, unamended.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Governance**

36. The original Tree Preservation Order was made on 22 March 2021 and this protects the trees for up to six months unless confirmed and made permanent.
37. The report refers to the duty imposed upon Councils by virtue of section 198 of the Town and Country Planning Act which requires the authority to ensure the preservation and protection of trees where appropriate.
38. In this instance, two objections to the Order have been received.

## **REASON FOR URGENCY**

### **Legislative requirement**

39. The TPO lapses on 22 September 2021 if not confirmed.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
TPO guidance <a href="https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas#confirming-tree-preservation-orders">https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas#confirming-tree-preservation-orders</a>	Online	Trees telephone: 020 7525 0511 Council website: www.southwark.gov.uk
TEMPO guidance <a href="http://www.flac.uk.com/wp-content/uploads/2014/12/TEMPO-GN.pdf">http://www.flac.uk.com/wp-content/uploads/2014/12/TEMPO-GN.pdf</a>	Online	As above
Southwark Council TPO information <a href="http://www.southwark.gov.uk/environment/trees/tree-preservation-orders-and-conservation-areas">http://www.southwark.gov.uk/environment/trees/tree-preservation-orders-and-conservation-areas</a>	Online	As above
Southwark TPO register <a href="https://geo.southwark.gov.uk/connect/analyst/mobile/#/main?mapcfg=Southwark%20Design%20and%20Conservation&amp;overlays=TPO%20zones">https://geo.southwark.gov.uk/connect/analyst/mobile/#/main?mapcfg=Southwark%20Design%20and%20Conservation&amp;overlays=TPO%20zones</a>	Online	As above

## APPENDICES

No.	Title
Appendix 1	Map
Appendix 2	Provisional TPO

## AUDIT TRAIL

<b>Lead Officer</b>	Stephen Platts, Director of Planning and Growth	
<b>Report Author</b>	Liam Bullen, TPO Officer	
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<b>Dated</b>	31 August 2021	
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<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Director of Law and Governance	Yes	Yes
Strategic Director of Finance and Governance	No	No
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>	1 September 2021	



**APPENDIX 1**

**MAP**

