

Item No. 7.	Classification: Open	Date: 25 January 2022	Meeting Name: Planning Sub-Committee A
Report title:		Tree Preservation Order (TPO) 634 Confirmation Report GasHolder Site Salter Road, Rotherhithe London SE16 6HZ	
Ward(s) or groups affected:		Rotherhithe	
From:		Director for Growth and Planning	

RECOMMENDATION

1. That the provisional TPO reference 634 be confirmed, unamended.

BACKGROUND INFORMATION

2. A Tree Preservation Order (TPO) was served on a precautionary basis on 2 August 2021 with respect to trees at a perceived threat from development.
3. The TPO covers one group of trees including mature Poplars and Pines both in Council and Private ownership, these trees are considered of importance to biodiversity and amenity and regarded by officers as those which have been noted within the site allocation as requiring any development to be set back from.
4. The order covers trees which are prominent as viewed from public realm and which currently contribute towards the street scene as well as conferring a positive asset to future any future development.
5. The site is within the New Southwark Plan (2022) allocations for redevelopment as housing (NSP78) to provide a minimum of 160 homes. The site description states that development should be set back from mature trees which should therefore presume their retention.
6. One objection to the TPO has 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

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 privately owned trees described in the schedule and shown in the plan would not be afforded any protection and could be removed at any time.

8. The trees were assessed as attaining a score of 16 (out of a potential total 25) under the Tree Evaluation Method for Tree Preservation Orders (TEMPO), with officers paying due regard to the condition and life expectancy of the trees and resulting in a decision guide indicating that the making of a TPO is defensible.
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 198 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 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.
15. Emerging policy of the New Southwark Plan (2022) P61 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 site owner, with regard to the privately owned trees.
18. The objection questions the validity of the TPO in regard to the state of some of the trees, highlighting several faults and the need for potential remedial work on several of the individual trees that form part of the proposed group TPO, demonstrating that a number of the trees surveyed are of limited arboricultural quality.
19. Furthermore, that the retention of trees along Salter Road has not features within the design guide/site principles for draft Site Allocation NSP78.
20. NSP78 states Development should respond to the surrounding context in terms of scale and height. A new green link between Salter Road and Windrose Close will provide access to Canada Water town centre and the woodland to the south of the development site. Development should be set back from the mature trees on Brunel Road.”
21. Whilst officers are in agreement that the trees to the North of the site are in a variety of retention classes from moderate to low amenity, when considered as a group, this area of urban greening is an important feature for the site providing both screening and potential for a wildlife corridor which contribute positively to the local area.
22. Indeed, officers are of the opinion that it is to these very trees at Salter Road that the site allocation refers, those on Brunel Road being unaffected by any development to this site.
23. Section 198 (1) of the Town and Country Planning Act 1990 (as amended) states: If it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order.
24. Section 197 of the Act relates to trees and development and allows for the making of conditions and serving of tree preservation orders with respect to the preservation and planting of trees. Where trees have previously been removed, the Council is not in any position to condition replacement planting.
25. Emerging policy P61 provides clear guidance that the loss of mature trees must be justified.

26. This together with the council's commitments in respect of climate change, the declaration of a climate emergency, its Climate Change Strategy and Southwark's Nature Action Plan all commit to ensure protection of trees and woodlands subject to tree preservation orders, in conservation areas and Sites of Importance for Nature Conservation, with trees to be retained on development sites and to require high standards of replacement tree planting.
27. Where trees within a development site which are covered by a TPO are scheduled for removal as part of a full planning permission; that planning permission overrides the TPO designation. Here suitable replacement planting is required under regional and local planning policy.
28. Trees to the South of the site have all but been removed already as can be seen in the aerial imagery from 2016 and 2019.
29. Poor historic management of a number of the trees within this strip of land would further raise the need to place further control over the management of these trees as works to trees subject to a Tree Preservation Order may be conditioned, including, works carried out to BS3998:2010 Tree works – Recommendations; the relevant British Standard.
30. Given that the trees have 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.
31. Since serving the order, officers have twice informed the site owners of their ability to submit a formal application for works to trees. To date, officers have received no such submissions
32. 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 granted, these are subject to conditional replanting in order to preserve amenity.
33. 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 reasonable compensation for the loss in amenity afforded by the unlawful removal of any tree.
34. 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.
35. 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

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. The trees contribute 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
39. 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.
40. Should the provisional TPO not be confirmed, there would be no statutory provision against the removal of these trees.
41. It is therefore recommended that in order to afford greater legislative protection to these trees and to secure suitable replacements for any trees lost to development, the Provisional Tree Preservation Order be confirmed, unamended.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Governance

42. The original Tree Preservation Order was made on 2 August 2021 and this protects the trees for up to six months unless confirmed and made permanent.
43. 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.
44. In this instance, one objection to the Order has been received.

REASONS FOR URGENCY

Legislative requirement

45. The TPO lapses on 2 February 2022 if not confirmed.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
TPO guidance	Online https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas#confirming-tree-preservation-orders	N/A
TEMPO guidance	Online http://www.flac.uk.com/wp-content/uploads/2014/12/TEMPO-GN.pdf (please copy and paste into your browser)	N/A
Southwark Council TPO information	Online http://www.southwark.gov.uk/environment/trees/tree-preservation-orders-and-conservation-areas	N/A
Southwark TPO register	Online https://geo.southwark.gov.uk/connect/analyst/mobile/#/main?mapcfg=Southwark%20Design%20and%20Conservation&overlays=TPO%20zones	N/A

APPENDICES

No.	Title
Appendix 1	Slides
Appendix 2	Provisional TPO
Appendix 3	Site map

AUDIT TRAIL

Lead Officer	Stephen Platts, Director for Growth and Planning	
Report Author	Liam Bullen, TPO Officer	
Version	Final	
Dated	10 January 2022	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Director of Law and Governance	Yes	Yes
Strategic Director of Finance and Governance	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	11 January 2022	

Slides





2016



2019

