

<b>Item No.</b> 7.	<b>Classification:</b> Open	<b>Date:</b> 5 July 2022	<b>Decision Taker:</b> Planning Sub-Committee A
<b>Report title:</b>		Tree Preservation Order 644 Confirmation Report - Rylstone, Grove Park, SE5 8LT	
<b>Ward(s) or groups affected:</b>		Champion Hill	
<b>From:</b>		Director of Planning and Growth	

## RECOMMENDATION

1. That the provisional Tree Preservation Order (TPO) reference 644 be confirmed, unamended.

## BACKGROUND INFORMATION

2. A TPO was served on a provisional basis on the 26 January 2022 in response to a s.211 notification for works to trees within a Conservation Area.
3. The TPO covers three trees comprising oak, yew and cypress, these trees are considered of importance to biodiversity and amenity, for which the council has a statutory duty to preserve and protect.
4. The order covers trees which are prominent as viewed from public realm and which currently contribute towards the street scene.
5. The site is located on a corner plot at the junction with Camberwell Grove and Grove Park and the host property has recently been altered under a programme of works since being purchased by the new owners in 2019.
6. One objection to the TPO has subsequently been received, which according to the council's standing orders must be considered at planning sub-committee before the order can be confirmed.
7. A subsequent application for works to some of the trees has since been received and approved by the council (22/AP/1462), this relates to a reduction to the oak tree covered by the provisional tree preservation order, no works were prescribed for the other two trees noted in the order.

## KEY ISSUES FOR CONSIDERATION

8. To continue to have effect the TPO attached in Appendix 2 must be confirmed within six 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.

9. The trees were assessed as attaining a score of 19 (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.
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 wilfully 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 framework 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. Policy P61 of the Southwark Plan 2022 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 agents for the site owner, with regard to the privately owned trees.
19. The objection argues against the inclusion of all three trees subject to the order.
20. Firstly, the objector questions the inclusion of the oak on the grounds that the tree doesn't make a positive contribution to the local area due to the poor topping of this tree some time ago by others. The tree by the nature of its primary stem/trunk being cut means it will grow in width and not height, and the look of the tree during the winter months, gives the look of poor landscaping and tree maintenance. Despite this, a subsequent application was received and approved by the council to "reduce the crown to form a more compact specimen, crown reduce by 20% and to weight reduce the elongated limb by 3m...for the longer-term health of the tree and stability."
21. It is the opinion of the objector that the yew isn't particularly large or contributes to the streetscape due to it been with in the site. Their concern is the potential damage this tree will have on the original perimeter wall to the site boundary. They argue that as this tree grows it could disable the old brick wall causing damage. The applicant would happily negotiate with the council for the replanting of a new tree within the site boundary to replace this tree. Of the three trees, this is the one that causes the objector the least concern and it may be possible that this tree is left where it is – subject to being able to revisit the matter in the future due to its impact on the perimeter wall. Should further evidence arise that the Yew is causing damage to the wall then officers would consider any application put forward. The tree preservation order requiring further evidence which cannot be requested under a s.211 notification.
22. For the cypress, this tree by far is the most concerning to the objector, simply due to the height and close proximity to the house, the primary concern is that this tree could fall onto the house and cause considerable damage. This tree is not native to the UK or with in the typical tree species within the immediate area. It also seemed unstable in the recent storm and its path, should it fall onto the house, would go directly into the kid's bedroom. This tree is by the entrance gate to the house and should it be removed it will allow a planted border to be put in place all along the current car parking area, which would vastly increase the foliage in the area. Officers have not received an arboricultural report which substantiates this viewpoint, nor has there been any evidence of root plate

disturbance. Proposed works to the tree were not included in the later submission for works to trees and so officers would question the expediency for removal. The proposal to remove the most prominent tree within the site, as viewed from public realm, and to replace with a planted border would not mitigate for its loss. Its contribution is, in part, due to its ornamental quality and evergreen nature, being untypical for the area, it provides further biodiversity and is also a recognized climate (change) resistant species.

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. Whilst the designation and requirement for the submission of evidence to quantify removal of a tree subject to a TPO is greater than that imposed upon trees within conservation areas, the criminal sanctions remain the same. Policy P61 provides clear guidance that the loss of mature trees must be justified.
25. 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.
26. Poor historic management of a number of the trees within this site 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.
27. 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.
28. Since serving the order, officers have informed the site owners of their ability to submit a formal application for works to trees. To date, officers have received one submission, which included works to the oak and other trees within the demise of the home owner but not to the other two trees as covered by the order.
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 granted, these are subject to conditional replanting in order to preserve

amenity.

30. 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.
31. 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.
32. 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.

## **Community, equalities (including socio-economic) and health impacts**

### **Community impact statement**

33. The Public Sector Equality Duty (PSED) contained in Section 149 (1) of the Equality Act 2010 imposes a duty on public authorities to have, in the exercise of their functions, due regard to three "needs" which are central to the aims of the Act:
  1. The need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act
  2. The need to advance equality of opportunity between persons sharing a relevant protected characteristic and persons who do not share it. This involves having due regard to the need to:
    - Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
    - Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
    - Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
  3. The need to foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to tackle prejudice and promote understanding.
34. The protected characteristics are: race, age, gender reassignment,

pregnancy and maternity, disability, sexual orientation, religion or belief, sex, marriage and civil partnership.

35. The council must not act in a way which is incompatible with rights contained within the European Convention of Human Rights. The council has given due regard to the above needs and rights where relevant or engaged throughout the course of determining this application.

#### **Equalities (including socio-economic) impact statement**

36. This recommendation engages certain human rights under the Human Rights Act 2008 (the HRA). The HRA prohibits unlawful interference by public bodies with conventions rights. The term 'engage' simply means that human rights may be affected or relevant.
37. The rights potentially engaged by this recommendation, including the right to a fair trial and the right to respect for private and family life are not considered to be unlawfully interfered with by this recommendation.

#### **Health impact statement**

38. Not required for recommendations to confirm a tree preservation order.

#### **Climate change implications**

39. The officer recommendation is in keeping with Priority 3 of the council's Climate Change Strategy and with particular reference to the Southwark Nature Action Plan (SNAP) (2020) which sets out the vision and strategy for the continued protection, conservation and enhancement of nature in the borough.
40. Southwark will continue 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. (1.18 Biodiversity and Trees (SNAP) (2020))

#### **Resource implications**

41. None.

#### **Legal implications**

42. Advice has not been sought from the director of law and governance.

#### **Financial implications**

43. Advice has not been sought from the strategic director of finance and governance.

## **Consultation**

44. 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**

45. It is recommended for the reasons set out above that the trees are of sufficient quality to justify TPO status.
46. The trees 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.
47. 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.
48. Should the provisional TPO not be confirmed, the trees would be afforded a temporary protection within the conservation area, although as previously stated, the council cannot request any proofs in support of a s.211 notification for removal, and so the likelihood would be that a further provisional tree preservation order is made.
49. It is therefore recommended that in order to afford greater legislative protection to these trees, and to ensure that sufficient evidence is provided in the event that removal is requested, that the provisional tree preservation order be confirmed, unamended.

## **Legislative requirement**

50. The TPO lapses on 26 July 2022 if not confirmed.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

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

51. None.

### **Strategic Director of Finance and Governance**

52. None.

### **Other officers**

53. None.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
TPO guidance	Online	Liam Bullen 020 7525 5338
<b>Link:</b> <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>		
TEMPO guidance	Online	Liam Bullen 020 7525 5338
<b>Link (please copy and paste into your browser):</b> <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>		
Southwark Council TPO information	Online	Liam Bullen 020 7525 5338
<b>Link:</b> <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>		
Southwark TPO register	Online	Liam Bullen 020 7525 5338
<b>Link:</b> <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>		

## APPENDICES

No.	Title
Appendix 1	Slides
Appendix 2	Provisional TPO



## AUDIT TRAIL

<b>Lead Officer</b>	Stephen Platts, Director of Planning and Growth	
<b>Report Author</b>	Liam Bullen, Graduate Planner – TPO officer	
<b>Version</b>	Final	
<b>Dated</b>	23 June 2022	
<b>Key Decision?</b>	No	
<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	No	No
Strategic Director of Finance and Governance	No	No
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>		23 June 2022

Slides







