

Item No. 8.	Classification: Open	Date: 5 July 2022	Decision Taker: Planning Sub-Committee A
Report title:		Tree Preservation Order 645 Confirmation Report - 2 Belvoir Road, London SE22 0QY and Land to the East of 2 Belvoir Road, London SE22 0QY	
Ward(s) or groups affected:		Dulwich Hill	
From:		Director of Planning and Growth	

RECOMMENDATION

1. That the provisional Tree Preservation Order (TPO) reference 645 be confirmed, unamended.

BACKGROUND INFORMATION

2. A Tree Preservation Order (TPO) was served on a provisional basis on the 31 January 2022 in response to a pre application report reviewed by the urban forester.
3. The TPO covers three individual trees, a pear, a lime and a cypress within the site; plus one group of mature limes, along a shared access road to the side of the host property.
4. The order was served with due consideration of the impact of the proposed development on established trees, together with a previous request from a near neighbour to place a tree preservation order on trees at this site prior to the site being sold on.
5. 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.

KEY ISSUES FOR CONSIDERATION

6. 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.
7. The trees were assessed as attaining a score of 12 (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, together with the limited visibility and resulting in a decision guide indicating that the making of a TPO is defensible.

8. 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.
9. 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.
10. 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

11. 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.
12. Section 198 of the Act imposes a duty on the local planning authority to ensure the preservation and protection of trees whenever appropriate.
13. 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.
14. 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.
15. The current recommendation supports the relevant national legislation, London and draft Southwark policies to retain trees with proven amenity value.

Objection to the order

16. One objection has been received from agents for the site owner, with regard to the privately owned trees.
17. The objection argues against the assessment and inclusion of trees subject to the order.
18. The objector questions the visibility of the trees from public realm along with the retention span of one of the trees. The objector also argues the scoring of the TEMPO assessment which is a median score for the trees and so far less overall than the sum of the constituent trees. This is standard for all site designations which include multiple trees. Officers have based the serving of the TPO with due regard to s.197 of the Town and Country Planning Act as it relates to development. The issuing of which is advised by the Secretary of State to ensure the long term retention of important trees over and above conditions. In the absence of any protection, there would be no vehicle by which the council could ensure adequate replacement for tree loss, as the site is not located within a conservation area.
19. It is the opinion of the objector that the TPO was raised as an emergency, just to prevent any tree removal prior to any planning consent being given.
20. Officers have recommended the serving of a tree preservation order for this site due to prior concerns of local residents along with an assessment of the impacts proposed by a scheme for which it was requested to provide assessment and comment.
21. Under paragraph 131 of the National Planning Policy Framework 2021, trees are a material consideration for the planning process. This consideration is further enhanced under policy G7 of the London Plan 2021 and policy P61 of the Southwark Plan 2022.
22. 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.
23. The absence of a TPO at this site would allow for wholesale tree removal without the means to guarantee replacement planting, in line with part 4 of policy P61.
24. 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.

25. 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, which result in no net loss of amenity, taking into account canopy cover as measured by stem girth; either 1. Within the development whereby valuation may be calculated using the Capital Asset Value for Amenity Trees (CAVAT) methodology or other assessment.
26. 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.
27. 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.
28. 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

29. 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.
30. The protected characteristics are: race, age, gender reassignment, pregnancy and maternity, disability, sexual orientation, religion or belief, sex, marriage and civil partnership.
31. 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

32. 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.
33. 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

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

Climate change implications

35. 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.
36. 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

37. None.

Legal implications

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

Financial implications

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

Consultation

40. 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

41. It is recommended for the reasons set out above that the trees are at significant risk of removal without the protection of a TPO.

42. 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.

43. Further to this, works to trees (including removal) required to implement a Full Planning Permission are exempted from the provisions of s.210 of the Act. With the loss of trees, to be mitigated for (onsite), or in exceptional cases, compensated for; in line with the NPPF Mitigation Hierarchy, Policy G7 of the London Plan 2021 and P61 of the Southwark Plan 2022.

44. Should the provisional TPO not be confirmed, the trees would not be afforded any protection.

45. 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, together with the potential to mitigate for loss in the event of development; that the provisional tree preservation order be confirmed, unamended.

Legislative requirement

46. The TPO lapses on 31 July 2022 if not confirmed.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Governance

47. None.

Strategic Director of Finance and Governance

48. None.

Other officers

49. None.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
TPO guidance	Online	Liam Bullen 020 7525 5338
Link: https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas#confirming-tree-preservation-orders		
TEMPO guidance	Online	Liam Bullen 020 7525 5338
Link (please copy and paste into your browser): http://www.flac.uk.com/wp-content/uploads/2014/12/TEMPO-GN.pdf		
Southwark Council TPO information	Online	Liam Bullen 020 7525 5338
Link: http://www.southwark.gov.uk/environment/trees/tree-preservation-orders-and-conservation-areas		
Southwark TPO register	Online	Liam Bullen 020 7525 5338
Link: https://geo.southwark.gov.uk/connect/analyst/mobile/#/main?mapcfg=Southwark%20Design%20and%20Conservation&overlays=TPO%20zones		

APPENDICES

No.	Title
Appendix 1	Slides
Appendix 2	Provisional TPO

AUDIT TRAIL

Lead Officer	Stephen Platts, Director of Planning and Growth	
Report Author	Liam Bullen, Graduate Planner –TPO officer	
Version	Final	
Dated	23 June 2022	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Director of Law and Governance	No	No
Strategic Director of Finance and Governance	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team		23 June 2022

Slides



