

Item No. 7.	Classification: Open	Date: 5 December 2022	Meeting Name: Planning Sub-Committee B
Report title:		TPO 677 Confirmation Report 89 Talfourd Road London SE15 5NN	
Ward(s) or groups affected:		St Giles	
From:		Director for Planning and Growth	

RECOMMENDATION

1. That the provisional TPO reference 677 be confirmed, unamended.

BACKGROUND INFORMATION

2. A Tree Preservation Order (TPO) was served on a provisional basis on the 14 July 2022 in response to resident requests following a proposal to fell the tree by the landowner.
3. The TPO covers one individual tree, a mature Horse Chestnut, located to the rear of the property.
4. The European Horse Chestnut has been classified as 'vulnerable' within the IUCN (International Union for the Conservation of Nature) Red List of Threatened Species.
5. Officers were notified by concerned residents of an intention to fell the tree on the 12 July 2022. Officers attended site and conducted a tree health investigation of the tree and TEMPO Assessment.
6. One objection and 16 letters in support of 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

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 tree described in the schedule and shown in the plan would not be afforded any protection and could be removed at any time.
8. The tree was 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 tree, together with the limited visibility and resulting in a decision guide indicating that the making of a TPO is merited.

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. Priority 3 of the Council's Climate Change Strategy, with particular reference to the Southwark Nature Action Plan (SNAP) (2020); sets out the vision and strategy for the continued protection, conservation and enhancement of nature in the borough. "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))"
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 3. Development must

retain and enhance the borough's trees and canopy cover; and 4. Where trees are removed to facilitate development, they should be replaced by new trees 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; or 2. If this is not possible, outside the development. In this case a financial contribution must be provided to improve borough tree planting located according to 'right tree right place' principles. The financial contribution will include ongoing maintenance costs where trees are planted in the public realm.

17. The current recommendation supports the relevant national legislation, London and 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 tree.
19. The objection argues against the TEMPO assessment and inclusion of the tree subject to the Order on the basis of visibility, or lack thereof, from public realm.
20. It is the opinion of the Objector that the LPA's assessment of the tree's condition does not conform to the TEMPO guidance in relation to its structural condition and suitability for a TPO; and the tree's very limited visibility from, and contribution to, the wider public realm.
21. The Objector argues that the condition of the tree would fall into the 'Fair' rather than 'Good' category. The Consultant on behalf of the tree owner notes the presence of several minor defects which conclude that a more accurate score for the condition of the tree would be fair as opposed to good.
22. The nature of the defects include the presence of the Horse Chestnut Leaf Miner (*Camereria ohridella*), whilst it's presence is not commonly referred to as a particularly problematic physiological defect in isolation, indeed it is often referred to as cosmetic; untreated (through the removal of the build-up of leaf mulch to prevent overwintering by the pest), this could result in significant impacts as it may provide an opportunity for secondary infection. Officers would therefore conclude that, in this instance, the presence of leaf miner is both manageable and relatively insignificant.
23. The Arboricultural consultant has also noted the presence of an area of orange staining on the north-east face of the trunk at approximately 2m above ground level, semi-consistent with early symptoms of Horse Chestnut Bleeding Canker (*Pseudomonas syringae* pv. *Aesculi*).

24. The TPO Officer for the Council, who undertook the initial assessment of the tree is a member of the London Tree Officer's Association Working Party on Horse Chestnut Bleeding Canker and has concluded that there is no indication that the tree exhibits signs of structural or physiological decay at this time. Any indications of enhanced bark necrosis and leaf loss would indicate that intervention was required, but that this is not currently the situation and so would not preclude the preservation of the subject tree.
25. The consultant would also like to draw the Council's attention to a historic and partially occluded wound located on the upper side of a significant scaffold branch at approximately 3m on the tree's southern aspect. The presence of reactive wood formation around the wound is suggestive of a reasonable reaction from the tree in compartmentalising the damage. This wound may become problematic in the future in the absence of intervention.
26. Officers identified the wound at time of the TEMPO Assessment and found it to have occluded by approximately 75%. Intervention through the reduction of the structural scaffold branch may be appropriate in the interests of good tree husbandry and could be applied for under a TPO application, in the normal way. Conditions may be applied under a tree preservation order to ensure that works comply with the relevant British Standard. BS:3998:2010 Tree works – recommendations, thus preventing poor or substandard works which may exacerbate tree decay.
27. The second objection is based upon visibility where the consultant argues that the visibility, in isolation, to be sufficient grounds for the making of a new order. Indeed the consultant highlights the need to consider the particular importance of the individual tree including its size and form, future potential, rarity, cultural or historic value, its contribution to, and relationship with, the landscape...(contribution to the character and setting or appearance of a Conservation Area)
28. For these other relevant factors, the consultant makes an important point and that potentially and even in the absence of achieving a sufficient TEMPO score that this tree would merit preservation on the basis of its stature, size and form, its relationship to the landscape in which it sits and its status as being considered 'vulnerable' within the IUCN (International Union for the Conservation of Nature) Red List of Threatened Species.
29. Horse Chestnut *Aesculus hippocastanum* has most recently been assessed for The IUCN Red List of Threatened Species in 2017. *Aesculus hippocastanum* is listed as Vulnerable under criteria C2a(i): Continuing decline AND a: number of mature individuals in all subpopulations (CR \leq 50, EN \leq 250, VU \leq 1,000) OR % of mature individuals in one subpopulation (CR \geq 90%, EN \geq 95%, VU = 100%)

30. The IUCN Red List is a critical indicator of the health of the world's biodiversity. It is a powerful tool to inform and catalyze action for biodiversity conservation and policy change, critical to protecting the natural resources we need to survive. It provides information about range, population size, habitat and ecology, use and/or trade, threats, and conservation actions that will help inform necessary conservation decisions. (<https://www.iucnredlist.org/>)
31. The serving of a TPO affords 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.
32. 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.
33. The law requires that in order for a TPO to be served the amenity must be assessed. Officers conclude that, for the reasons set out above, 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, that the tree is generally free of defects, showing good health and has reached normal longevity and size for the species and so should be afforded a 'GOOD' status.
34. 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

35. The TPO was lawfully served to the owner and near neighbours of the tree and included in the TPO register which is publically available online. Once confirmed the planning and land charges registers are updated.

Conclusion

36. It is recommended for the reasons set out above that the tree is at significant risk of removal without the protection of a TPO.
37. 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.

38. Should the provisional TPO not be confirmed, the tree would not be afforded any protection.
39. It is therefore recommended that in order to afford greater legislative protection to the tree, and to ensure that sufficient evidence is provided in the event that removal is requested, that the Provisional Tree Preservation Order be confirmed, unamended.

REASONS FOR URGENCY

Legislative requirement

40. The TPO lapses on 13 January 2023 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	NA
TEMPO guidance http://www.flac.uk.com/wp-content/uploads/2014/12/TEMPO-GN.pdf	Online	NA
Southwark Council TPO information http://www.southwark.gov.uk/environment/trees/tree-preservation-orders-and-conservation-areas	Online	NA
Southwark TPO register https://geo.southwark.gov.uk/connect/analyst/mobile/#!/main?mapcfg=Southwark%20Design%20and%20Conservation&overlays=TPO%20zones	Online	NA

APPENDICES

No.	Title
Appendix 1	Slides
Appendix 2	Map
Appendix 3	Tree Preservation Order

AUDIT TRAIL

Lead Officer	Stephen Platts, Director of Planning and Growth	
Report Author	Liam Bullen, Tree Preservation Order (TPO) Officer	
Version	Final	
Dated	17 November 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		21 November 2022

Slides





APPENDIX 2

MAP

