

Item No. 6.2	Classification Open	Date: 24 January 2024	Meeting Name: Planning Committee (Smaller Applications)
Report title:		TPO 701 Confirmation Report Land to North of Featherstone Mews and Rear 13-16 Talbot Road, SE22 8EH, 25-30 St Francis Road SE22 8DE	
Ward(s) or groups affected:		Champion Hill	
From:		Director of Planning and Growth	

RECOMMENDATION

1. That the provisional TPO reference 701 be confirmed, with the following amendments: A change to the extent of the map and updated schedule of species.

BACKGROUND INFORMATION

2. A Tree Preservation Order (TPO) was served, by hand, on a provisional basis, by the urban forester during a pre application request which would have impacted upon the SINC. Following the serving of the TPO, a full planning application has been submitted for the site in question.
3. The order was posted at site, was served by hand to local residents neighbouring the land, and sent to registered addresses for Network Rail and; also by email, to the agent for Featherstone Homes on the 14 August 2023.
4. The TPO covers a Site of Borough Grade Importance for Nature Conservation with the following habitat designation: Roughland, non-native-woodland, scrub.
5. The site, which forms part of a larger Borough SINC was designated in January 1989 with a Boundary change in 1995 and last reviewed in March of 2015.
6. The citation reads:..."The railway running south from this cutting through East and North Dulwich stations to Herne Hill Stadium runs through a narrow cutting, then on an embankment, both of which contain a similar mix of sycamore - ash woodland and roughland. The habitat corridor supports a good range of bat species with records for soprano pipistrelle,

pipistrelle, noctule and lesser noctule bats being present. Common frog and stag beetle have also been recorded. The site forms a strategic habitat corridor through a residential part of the borough, connecting a number of SINCs and open space. For this reason, it is of high value as a foraging and dispersal corridor for wildlife. Hedgehogs have been recorded around Greendale fields and reptiles are likely present in the area. Owned by Network Rail, there is no public access to the site, but the railsides form a pleasant backdrop for train travelers.”

7. The amendments proposed follow a site visit which highlighted the extent of woodland, boundary fencing and species therein. The amended plan would allow for continued access and maintenance by Network Rail and for any future planning applications relating to turning this 3m wide strip outside of the TPO zone to hard-standing.
8. Two letters in support and 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

9. To continue to have effect the TPO attached in Appendix 1 must be confirmed within 6 months from the date of being served
10. The TPO was served following consultation with the borough ecologist during considerations for a development proposal for the site under a pre application submission to the Council.
11. The site was assessed as attaining a score of 15 (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 consideration of the site's woodland structure and its heightened habitat status and resulting in a decision guide indicating that the making of a TPO is definitely merited.
12. 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.
13. 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.

14. 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.
15. 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).
16. The TPO would therefore not preclude any works of a Health and Safety nature being undertaken, at any time, by Network Rail on operational land under its ownership.

Policy implications

17. 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.
18. Section 198 of the Act imposes a duty on the local planning authority to ensure the preservation and protection of trees whenever appropriate.
19. 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))"
20. 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.
21. Policy P57 of the Southwark Plan 2022:
 1. Development will not be permitted on Metropolitan Open Land (MOL) or Borough Open Land (BOL).

In exceptional circumstances development may be permitted on MOL or BOL when:

- It consists of ancillary facilities that positively contribute to the setting, accessibility and quality of the open space and if it does not affect its openness or detract from its character. Ancillary facilities on MOL must be essential for outdoor sport or recreation, cemeteries or for other uses of land which preserve

- the openness of MOL and do not conflict with its MOL function; or
- It consists of the extension or alteration of an existing building providing that it does not result in disproportionate additions over and above the size of the original building; or
 - It consists of the replacement of an existing building, provided that the new building is no larger than the building it replaces.
2. Development will not be permitted on Other Open Space (OOS). In exceptional circumstances development may be permitted if it consists of replacement OOS of equivalent or greater size or substantially better quality can be secured on site or nearby before development commences.
22. Protecting and improving open space plays an important role in climate change adaption and mitigation, as such any development proposal would constitute a departure from the Development Plan.
23. All sites of borough grade importance for nature conservation are, by default, designated Borough Open Land (BOL).
24. 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
 - Within the development whereby valuation may be calculated using the Capital Asset Value for Amenity Trees (CAVAT) methodology or other assessment or;
 - 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.
25. The current recommendation supports the relevant national legislation, London and Southwark policies to retain trees and landscape with proven amenity or habitat value.

Objection to the order

26. Two objections have been received from parties with interest in the land.

27. The basis of the objections are on the woodland designation for the order and the quality of trees subject to the same order and that it may prejudice development of the site.
28. Featherstone Homes are a Party with an Interest in the Land – Contract with Option to Purchase subject to Planning Approval.
29. Network Rail is the freehold owner of the site which is currently utilised as access for inspection and maintenance of Network Rail's infrastructure.
30. As a statutory undertaker, Network Rail is able to remove trees in order to facilitate inspection, repair or renewal of their infrastructure.
31. Under section 14 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 this enables railway undertakers to remove TPO trees.
32. It has been argued that development of the site would improve pedestrian and vehicular access to the site, however it was apparent that there is an area to the entrance to the site and a long strip to the side which could be laid to hard standing and which are recommended to be excluded from the TPO map (see Appendix 3).
33. Nothing in this order would preclude Network Rail from applying to undertake such works as to improve access to the Network.
34. A long pedestrian ramp is located to the side of the TPO with access from the station and from the bottom of Dog Kennel Hill. Currently this has a wooden fence running the length of the ramp and there are metal railings separating the site at the station.
35. In the event that the site is sold on, Network rail would retain a 3m wide strip to the railway, in any event.
36. Access could easily be afforded by a gate erected either within the wooden fence or within the metal railings.
37. All borough SINCs are Borough Open Land by default regardless of whether they are open or not as openness is not necessarily an ecological consideration, indeed it can provide further protection for those species outlined in an ecological appraisal. Here it is the distinct contribution of the site, as a whole, which is considered.
38. Similarly woodland sites would comprise a mix of healthy trees, young saplings and deadwood habitats attracting a range of fauna including protected invertebrate species.
39. The topography of the site, comprising an embankment which drops down and away from the railway would limit the potential for trees to fall towards the railway should they fail.

40. The TEMPO assessment took into consideration the site, as a whole, and did not consider dead trees. Whilst these are invaluable to insects and fungi and contribute to overall biodiversity, this would not be suitable for the purposes of TEMPO scoring.
41. TEMPO is but one tool in consideration for issuing a Tree Preservation Order. Section 197 (b) of the Town and Country Planning Act provides for TPOs to be served in consideration of granting a planning permission, overwhelming public support for a TPO and other considerations, such as site designation, also form part of the decision making process when recommending provisional orders.
42. TPOs are considered at every stage of the Planning Process from pre-application, to assessment of full planning applications and post occupation under s.197 (tree protection and tree planting conditions, and TPOs in respect of granting permission) and 198 (Power to issue TPO) of the TCPA 1990. Indeed they are usually best served early on in the process to guarantee sufficient appraisal is given to trees, a material consideration (paragraph 136, National Planning Policy Framework, 2023).
43. The serving of a TPO can be undertaken, at any time, in respect of fulfilling the Local Planning Authority's Statutory Duty, 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. (s.198 of the Town and Country Planning Act, 1990 (as amended)).
44. In terms of the woodland designation, Officers have visited site to review the citation for the Borough SINC and to record the current condition and range of taxa visible at time of survey.
45. Officers noted the majority of the site retains what would be considered a woodland structure formed of some mature dead trees, older mature trees with branch junction cavities and potential for roosts. Multistem mature Sycamore (coppice regrowth). Yew, Holly, emergent Holm Oak and Ash. Bramble, Fern, native Clematis. At least 3 different bird species were heard. Some Cherry Laurel is found within the site and could be considered invasive, these are excluded from the Order.
46. The mature tree line is visible from St Francis Park and Dog Kennel Hill estate.
47. Essential cables and a modicum of litter from visitors to the railway was noted at the top end of the site. Network rail will retain 3m boundary along its land if plot is sold.

48. There would be potential for enhanced planting and further screening to railway, however this would remain Network rail land with no assurances that trees would not be felled and so given limited weight.
49. A fence line is erected circa 3m from the rear boundary of the houses on St Francis Road and the Woodland proper. This is also identified on OS maps. To the entrance to the site is a flat area upon which a rubbish skip was located.
50. Site storage and waste were located at the entrance to the site and the Officer was informed that this was not the responsibility of Network Rail. Network Rail have verbally agreed to have this removed to avoid an enforcement (s.215 notice).
51. Based on the above, Officers will be recommending an amendment to the Order in respect of the TPO map extent and an update to the schedule of species.
52. Where relevant to an assessment of the amenity value of trees or woodlands, authorities may consider taking into account other factors, such as importance to nature conservation or response to climate change. However, these factors alone would not warrant making an Order.
53. Orders covering a woodland protect the trees and saplings of whatever size within the identified area, including those planted or growing naturally after the Order was made. This is because the purpose of the Order is to safeguard the woodland as a whole, which depends on regeneration or new planting.
54. If planning permission is granted for a site and the felling of a tree protected by a TPO is included in the application, then planning permission outweighs any protection that the TPO may have offered. However, if a tree protected by a TPO does need to be felled, the landowner has a duty to replace the tree.
55. An order affords trees the highest level of protection available and places a greater duty on the tree owner, or any affected party, to provide overwhelming evidence in support of any removal. Where removals are granted, these are subject to conditional replanting in order to preserve amenity.
56. However, 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.
57. 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.

58. Currently, there is a live application for the construction of nine new houses within the Borough SINC on land designated as Borough Open Land.
59. The current application is being considered with due regard to the Development Plan (the Southwark Plan 2022), London Plan Policies and the National Planning Policy Framework.
60. In assessing development proposals at all stages of the planning process, from Pre-Application through to Full Planning and Prior to Occupation, Officers weigh the impacts on trees within and without the red line boundary and will consider the issuing of a Provisional Tree Preservation Order.
61. 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. Further that, in the event that a scheme is deemed acceptable at full planning, then on the granting of a planning permission, a TPO could be annulled if it is required to facilitate development.
62. This is considered to be sufficient protection of the rights of all parties concerned and their ability to enjoy and protect their property.

Consultation

63. The TPO was lawfully served to Network Rail and near neighbours of the site and included in the TPO register which is publically available online. A further email was sent and included in the Pre App discussion with Shorten for Featherstone Homes.
64. Two letters in support of the TPO were received by local residents. These related to the benefit of the site in providing habitat and screening.
65. Two objections to the Order were received from Network rail and from Shorten for Featherstone Homes.
66. Once confirmed the planning and land charges registers are updated.

Conclusion

67. It is recommended for the reasons set out above that the site merits the protection of a Woodland TPO.
68. 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. There is special dispensation afforded to Network Rail on Operational Land.

69. This is considered to be sufficient protection of the rights of all parties concerned and their ability to enjoy and protect their property.
70. Should the provisional TPO not be confirmed, the trees would not be afforded any statutory protection. However, for the purposes of Bio Diversity Net Gain (BNG), the trees and their canopy would have been captured as of January 2020 and be duly considered in respect of relevant policy, particularly P61 of the Southwark Plan 2022.
71. In order to afford greater legislative protection to the site, along with suitable consideration in respect of planning policy, and in the event that removal is requested, it is therefore recommended that the Provisional Tree Preservation Order be confirmed, with the following amendments.
 72. A change to the extent of the TPO map.
 73. An updated schedule of species.

Legislative requirement

74. The TPO lapses on 14 February 2024 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	Email trees.envl@southwark.gov.uk Telephone 020 7525 0511
TEMPO guidance http://www.flac.uk.com/wp-content/uploads/2014/12/TEMPO-GN.pdf	Online	
Southwark Council TPO information http://www.southwark.gov.uk/environment/trees/tree-preservation-orders-and-conservation-areas	Online	
Southwark TPO register https://geo.southwark.gov.uk/connect/analyst/mobile/#/main?mapcfg=Southwark%20Design%20and%20Conservation&overlays=TPO%20zones	Online	

APPENDICES

No.	Title
Appendix 1	TPO 701 (Tree Preservation Order)
Appendix 2	Slides
Appendix 3	Maps
Appendix 4	TEMPO (Tree Evaluation Method for Tree Preservation Order)
Appendix 5	SINC Citation SoBII02 (Sites of importance for Nature Conservation)
Appendix 6	SINC Map (Extract)

AUDIT TRAIL

Lead Officer	Stephen Platts, Director of Planning and Growth	
Report Author	Liam Bullen, Senior Planner - Urban Forester	
Version	Final	
Dated	20 December 2023	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Assistant Chief Executive – Governance and Assurance	No	No
Strategic Director of Finance	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	10 January 2024	