

<b>Item No.</b> 6.3	<b>Classification</b> Open	<b>Date:</b> 24 January 2024	<b>Meeting Name:</b> Planning Committee (Smaller Applications)
<b>Report title:</b>		TPO 704 Confirmation Report Land adjacent 100 Glengall Road, SE15 6RR	
<b>Ward(s) or groups affected:</b>		Old Kent Road	
<b>From:</b>		Director of Planning and Growth	

## RECOMMENDATION

1. That the provisional TPO reference 704 be confirmed, unamended.

## BACKGROUND INFORMATION

2. A Tree Preservation Order (TPO) was served, by hand, on a provisional basis, by the Urban Forester in consideration of a planning application for 2 properties to be built within the curtilage of the garden to 100 Glengall Road which would have necessitated the removal of the tree.
3. The order was issued to 100 Glengall Road, SE15 6RR and to the council's tree services team on 22 September 2023.
4. The TPO covers one individual tree, an early mature Red Oak, *Quercus rubra*, located on Southwark Freehold land forming a verge which wraps around the property to the East, North and West.
5. Other trees planted by the council on this land are not subject to the TPO as they are not directly impacted by the proposal and continue to be managed in accordance with the council's tree management strategy.
6. The council's tree services team have raised no objection to the serving of the TPO.
7. 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

8. To continue to have effect the TPO attached in Appendix 1 must be confirmed within 6 months from the date of being served.

9. The tree was assessed as attaining a score of 21 (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 its heightened visibility and resulting in a decision guide indicating that the making of a TPO is definitely merited.
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 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**

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. 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))"
16. 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.

17. 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.
18. The current recommendation supports the relevant national legislation, London and Southwark policies to retain trees with proven amenity value.

### **Objection to the order**

19. One objection has been received from the owner of 100 Glengall Road.
20. The basis of the objection is that the tree is sited too close to the foundations and will cause subsidence. Leaves from said tree are blocking the guttering of the property. Part of a fence has collapsed as a result of the roots. Debris from the tree is causing roof damage.
21. The objector also questions serving the TPO on the tree some 23 years after the property was purchased under the Right to Buy scheme (Year 2000) and states that this should have been disclosed prior to him purchasing the property.
22. With respect to annoyance matters, the council clearly identifies on its webpages those works it will undertake in regard to its tree stock.
23. This includes: Trees placed on a schedule for pruning will not be pruned earlier than stated unless they are dead, dying, dangerous or causing immediate hazard.
  - We will not usually prune a tree for:
  - blocking light to a property
  - harbouring wildlife
  - interfering with TV signals
  - seasonal leaf fall
  - bird, fruit or sap mess
  - blocked gutters
24. Matters of nuisance and damage are covered, again on the council's web

pages under tree insurance claims.

25. It should be noted that an informative on the web page states: It's the policy of Southwark council to preserve the green amenity afforded by street trees and we seek to retain them wherever practicable.
26. 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)).
27. Further that under s.197 of the same act: It shall be the duty of the local planning authority to:
  - (a) Ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees; and
  - (b) Make such orders under section 198 as appear to the authority to be necessary in connection with the grant of such permission, whether for giving effect to such conditions or otherwise.
28. It 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.
29. 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.
30. 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.
31. Currently, there is a live application for the construction of two new houses within the private garden area. The application proposes the removal of the street tree to facilitate two car parking spaces and the building line of the proposed dwellings.
32. 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.

33. The council notes that two applications to develop the land were met with approval in 2001 and 2007 but were never constructed. Two other applications had also been refused, primarily in terms of design. These applications provided for replacement planting or transplanting of a then semi-mature tree.
34. Upon review, the tree is of such size that transplanting or simple replacement of the tree, as considered acceptable under the previous applications, would now not be possible.
35. Further, our transport policy team object to the removal of the tree to facilitate parking as this would be a contradiction of Southwark Air Quality Action Plan Action 7.5 and Southwark Movement Plan Actions 7 and 9, which help Southwark to grow sustainably without adverse environmental impacts and emissions through car-free development.
36. 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.
37. 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.

## **Consultation**

38. The TPO was lawfully served to the council's tree services team 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**

39. It is recommended for the reasons set out above that the tree merits the protection of a TPO.
40. 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.

41. Should the provisional TPO not be confirmed, the tree would not be afforded any statutory protection. However, any works to the tree undertaken by any party other than the council, could be construed as criminal damage.
42. In order to afford greater legislative protection to the tree, and to ensure that sufficient evidence is provided, along with suitable consideration in respect of planning policy, in the event that removal is requested, it is therefore recommended that that the Provisional Tree Preservation Order be confirmed, unamended.

### Legislative requirement

43. The TPO lapses on 22 March 2024 if not confirmed.

### BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
TPO guidance <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>	Online	Email trees.envl@southwark.gov.uk  Telephone 020 7525 0511
TEMPO guidance <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>	Online	
Southwark Council TPO information <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>	Online	
Southwark TPO register <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>	Online	

## APPENDICES

No.	Title
Appendix 1	TPO (Tree Preservation Order)
Appendix 2	Slides
Appendix 3	Maps
Appendix 4	TEMPO (Tree Evaluation Method for Tree Preservation Order)

## AUDIT TRAIL

<b>Lead Officer</b>	Stephen Platts, Director of Planning and Growth	
<b>Report Author</b>	Liam Bullen, Senior Planner - Urban Forester	
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<b>Dated</b>	21 November 2023	
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<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Assistant Chief Executive – Governance and Assurance	No	No
Strategic Director of Finance	No	No
<b>Cabinet Member</b>	No	No
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