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<b>Item No.</b> 8.	<b>Classification:</b> Open	<b>Date:</b> 26 January 2021	<b>Meeting Name:</b> Planning Sub-Committee A
<b>Report title:</b>		TPO 599 confirmation: 51, Crescent Wood Road, London SE26 6SA	
<b>Ward(s) or groups affected:</b>		Dulwich Wood	
<b>From:</b>		Director of Planning	

## RECOMMENDATION

1. That the provisional TPO reference 599 be confirmed, unamended.

## BACKGROUND INFORMATION

2. A Tree Preservation Order (TPO) was served on 17 August 2020 following a request to remove the tree under a S.211 (Trees in Conservation Areas) application.
3. The TPO protects a semi-mature Horse Chestnut tree, and situated within the front garden space to 51 Crescent Wood Road, adjacent to the boundary wall with.
4. The tree is in good health and prominent as viewed from public realm The Horse Chestnut is noted as vulnerable within the IUCN: The International Union for Conservation of Nature Red List of threatened species; a recent increase in threat level from near threatened. Recommended conservation methods include resource and habitat protection and site/area management along with pest and disease controls and ex-situ conservation (propagation).
5. One objection 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

6. 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 trees described in the schedule and shown in the plan would continue to be afforded the temporary statutory protection of the Conservation Area designation.

7. The TPO includes a managed tree, which retains prominence despite having previously been reduced in stature and is of particular note given the current threat level to this species as a whole across Western Europe.
8. This tree has been assessed as contributing to both amenity and local biodiversity, statutory duties of the Council under the Town and Country Planning Act and the Natural Environment and Rural Communities Acts, respectively.
9. The tree was assessed as attaining a score of 17 (out of a potential total 25) under the Tree Evaluation Method for Tree Preservation Orders (TEMPO), resulting in a decision guide indicating that making a TPO is merited. The primary basis for objection is the scoring of this tree under TEMPO; however, as will be detailed below, guidance is clear on this point and officer's are of the opinion that the assessment undertaken by the council is both fair and proportionate.
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. London Plan Policy 7.21 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. The draft New Southwark Plan P60 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 a local resident.
19. The objection proposes that the tree does not meet the criteria under TEMPO for the making of a Tree Preservation Order due to its close proximity to the host building and that the tree has the potential to damage a wooden boundary fence (with low brick foundations).
20. The tree is a semi-mature specimen which despite previous pruning, continues to contribute to the wider area. An arboricultural assessment of the tree supplied by the objector shows the tree to be of good physiology and structure, and despite the fused trunk; the objector's consultant does not find any external features which would limit the tree's safe useful life expectancy.
21. The appointed arboricultural consultant has assessed the tree as providing in excess of 10 years of value to amenity, however the Arboricultural association have noted a life expectancy of between 100 and 150 years for a horse chestnut. So, whilst officers are in agreement with the consultant that the tree is a semi mature specimen within  $\frac{1}{4}$  to  $\frac{1}{2}$  of its lifespan, the tree could easily provide value for a further 50 to 75 years.
22. The appointed arboricultural consultant for the objector goes on to conclude that due to its proximity to a structure (in this cases a fence and wall) that there is no qualification for protecting the tree under a TEMPO assessment. The TEMPO guidance suggests that where a tree is too close to a structure and is causing subsidence damage the score associated with longevity of the tree should be zero. However, the guidance includes a provision for common sense and states that: *"if the trees are being considered for TPO protection prior to development, and if it is apparent that demolition of existing structures will be a component of this process, then a tree **should not be marked down simply because it is standing hard up against one of the existing structures.**"* In this

case and where a localised repair or rebuilding of the fence and wall is a reasonable expectation to save a significant tree the TEMPO scoring complies with the guidance.

23. Further clarification from the arboricultural consultant confirms that the tree is not presently causing damage to any adjacent structure. The consultant responds:

“It is the dwarf wall on which the boundary fence has been placed on and where the new fence will be reinstalled. The wall can be seen on picture eight at the bottom picture, the picture attached also shows the wall in the bottom of the picture. I have not said there is damage at moment but will overtime, the attached picture shows the existing relationship between the tree and boundary fence/ wall.”

24. As a new fence is to be installed, there should be no reason why sufficient foundations which bridge the roots could not be considered by the objector or their consultant; for which there is adequate precedence both within the borough and throughout the UK and which would negate any need to remove the tree.
25. Whilst this tree has been managed within its setting and has produced a bulbous form, this is in itself attractive and would not conflict with local and regional policy; particularly given mayoral commitments to increase canopy cover throughout London, which would not be achievable without preserving that canopy cover which is presently enjoyed. Furthermore, there is no reason why the trees could not continue to be maintained on a regular basis under the protection of a TPO.
26. The arboricultural consultant is dismissive of the IUCN threat level to the species citing the prevalence of horse chestnut in the UK. That notwithstanding, the tree is included on the IUCN red list and that threat level has been increased due to pressures including the urban context. Given that the UK, via DEFRA, is a member body of the IUCN and the statutory duty of the council to preserve and enhance biodiversity under the Natural Environment and Rural Communities Act, officers are of the opinion that the tree should be protected.
27. The serving of a TPO affords this tree the highest level of protection available and places a greater duty on the tree owner to provide overwhelming evidence in support of any removal. To date, the objector has not provided overwhelming supportive professional evidence to the claim that the tree is causing damage.
28. 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 suitable compensation for the loss in amenity afforded by the unlawful removal of any tree.

29. To date, officers have received one application to reduce and shape the tree in 2011, with a further request for removal which resulted in the serving of a tree preservation order.
30. 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.
31. Photos of the tree are included within the TPO at Appendix 1.
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.

## **Consultation**

33. 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**

34. It is recommended for the reasons set out above that the tree is of sufficient quality to justify TPO status.
35. The tree is visible from the public realm, it contributes not only to the verdant nature of their setting of the conservation area but also contributes to the council's statutory obligation to the preservation and enhancement of biodiversity.
36. 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.
37. Should the provisional TPO not be confirmed, it is likely the council would receive a subsequent S.211 application to remove the tree resulting in the serving of a further TPO.
38. It is therefore recommended that in order to afford greater legislative protection to these prominent trees, the provisional Tree Preservation Order be confirmed, unamended.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Democracy**

39. The original Tree Preservation Order was made on 17 August 2020 and this protects the trees for up to six months unless confirmed and made permanent.
40. The report refers to the duty imposed upon council's by virtue of section 198 of the Town and Country Planning Act which requires the authority to ensure the preservation and protection of trees where appropriate.
41. In this instance, one objection to the Order has been received.

## REASONS FOR URGENCY

### Legislative requirement

42. The TPO lapses on 17 February 2021 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	NA
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	NA
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	NA
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	NA

## APPENDICES

No.	Title
Appendix 1	Photos
Appendix 2	Provisional TPO

## AUDIT TRAIL

<b>Lead Officer</b>	Simon Bevan, Director of Planning	
<b>Report Author</b>	Liam Bullen, TPO Surveyor	
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<b>Dated</b>	5 January 2021	
<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	Yes	Yes
Strategic Director of Finance and Governance	No	No
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>		7 January 2021

**APPENDIX 1:**

**Photos**



