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Item No. 7.3	Classification: Open	Date: 7 July 2021	Meeting Name: Planning Sub-Committee A
Report title:		TPO 617 Confirmation Report Barkham Terrace, King Edward Walk, SE1	
Ward(s) or groups affected:		St George's	
From:		Director for Growth and Planning	

RECOMMENDATION

1. That the provisional TPO reference 617 be confirmed with the following modification, T1 is omit from the order.

BACKGROUND INFORMATION

2. A Tree Preservation Order (TPO) was served on 10 March 2021 following a request to remove two trees under a S.211 (Trees in Conservation Areas) application.
3. 10 Objections to the removal of the trees, 1 neutral comment and 2 letters in support of removal were received. Objectors raised the consideration of the trees as a whole, including those located within the grounds of Morley College and other private gardens.
4. The TPO covers one area, two groups and one individual tree, all of which are represented within the 1879 OS map and of special importance to the character, setting and design of the terrace and its environs.
5. The order covers trees which are both prominent and those to whom amenity is conferred to neighbouring properties only. The number of objections to the original felling notification is testament to their amenity.
6. 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

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

8. The TPO includes a number of trees, recognised as identifiably historic assets which provide a positive contribution to the character and setting of the Conservation Area.
9. The trees were assessed as attaining a score of 14 (out of a potential total 25) under the Tree Evaluation Method for Tree Preservation Orders (TEMPO), with officers paying due regard to the lack of visibility of some of the trees from public realm and resulting in a decision guide indicating that the making of a TPO is defensible.
10. T1 as indicated in the historic map is no longer present.
11. 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.
12. 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.
13. 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

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

Objection to the Order

19. Two Objections have been received from local residents.
20. The objections propose that the order is too broad, disproportionate and places an extra financial burden and criminal sanctions on tree owners. Further that the TEMPO scoring is incorrect and was served without consultation.
21. Section 198 (1) of the Town and Country Planning Act 1990 (as amended) states: If it appears to a local planning authority that it is expedient 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.
22. Whilst the designation and requirement for the submission of evidence to quantify removal of a tree subject to a TPO is greater than that imposed upon trees within conservation areas, the criminal sanctions remain the same. Emerging policy P60 provides clear guidance that the loss of mature trees must be justified.
23. The TEMPO evaluation was a fair evaluation of the trees within Barkham Terrace with marks dropped for lack of public visibility. The overall structure and physiological condition of the trees was noted. Poor historic management of a number of the trees would further raise the need to place further control over the management of these trees as works to trees subject to a Tree Preservation Order may be conditioned, including, works carried out to BS3998:2010 Tree works – Recommendations; the relevant British Standard.
24. Given that the trees have previously been reduced, there is no reason why the trees could not continue to be maintained on a regular basis under the protection of a TPO.
25. 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.

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 suitable compensation for the loss in amenity afforded by the unlawful removal of any tree.
27. To date, officers have received four applications to reduce the trees ranging from 2009 through to 2019 although we do not hold a record of all works as being previously notified to the council.
28. 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.
29. 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

30. 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

31. It is recommended for the reasons set out above that the trees are of sufficient quality to justify TPO status.
32. The trees contribute not only to the verdant nature of their setting of the Conservation Area but also confers benefit to the wider community both in the uptake of pollutants and the reduction in direct precipitation and counter the urban 'heat island' effect through shade cast
33. 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.
34. Should the provisional TPO not be confirmed, it is likely the council would receive subsequent S.211 applications to remove the trees resulting in the serving of a further TPO.
35. It is therefore recommended that in order to afford greater legislative protection to these trees, the Provisional Tree Preservation Order be

confirmed, subject to modification.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Governance

36. The original Tree Preservation Order was made on 10 March 2021 and this protects the trees for up to six months unless confirmed and made permanent.
37. The report refers to the duty imposed upon councils 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.
38. In this instance, two objections to the Order have been received.

REASONS FOR URGENCY

Legislative requirement

39. The TPO lapses on 10 September 2021 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	Maps
Appendix 2	Provisional TPO

AUDIT TRAIL

Lead Officer	Stephen Platts, Director of Planning and Growth	
Report Author	Liam Bullen, TPO Officer	
Version	Final	
Dated	22 June 2021	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Director of Law and Governance	Yes	Yes
Strategic Director of Finance and Governance	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team		24 June 2021

APPENDIX 1

Maps



