



City of Westminster

# Executive Summary and Recommendations

**Title of Report:** Tree Preservation Order No. 630  
(2015)  
11 Hill Road London NW8 9QE

**Date:** 1<sup>st</sup> March 2016





City of Westminster

# Executive Summary and Recommendations

**Title of Report: Tree Preservation Order No. 630  
(2015) 11 Hill Road London NW8  
9QE**

**Date: 1<sup>st</sup> March 2016**

## **Summary of this Report**

The City Council has made a Tree Preservation Order (TPO) to protect one Bay tree (T1) located in the rear garden at 11 Hill Road London NW8 9QE. The TPO is provisionally effective for a period of six months from 16<sup>th</sup> September 2015 during which time it may be confirmed with or without modification. If not confirmed, the TPO will lapse after 15<sup>th</sup> March 2016.

The TPO was made because the tree has significant amenity value and makes a valuable contribution to the character and appearance of the conservation area. The City Council, having been made aware of the proposal to remove the bay tree considers it expedient in the interests of the amenity that a TPO is made in order to safeguard its preservation and future management.

Objection to the TPO has been made by Mr Siddharth Prasad the owner of 11 Hill Road.

The City Council's Arboricultural Officer has responded to the objections.

## **Recommendations**

The Sub-Committee should decide EITHER

(a) NOT to confirm Tree Preservation Order No. 630 (2015); OR

(b) Confirm Tree Preservation Order No. 630 (2015) with or without modification with permanent effect.



City of Westminster

# Committee Report

Item No:	
Date:	1 March 2016
Classification:	General Release
Title of Report:	Tree Preservation Order No. 630 (2015) 11 Hill Road London NW8 9QE
Report of:	The Director of Law
Wards involved:	Abbey Road
Policy context:	
Financial summary:	No financial issues are raised in this report.
Report Author:	James Holliman
Contact details:	<a href="mailto:jholliman@westminster.gov.uk">jholliman@westminster.gov.uk</a>

## **1. Background**

- 1.1 Under current legislation the City Council has the power to make and to confirm Tree Preservation Orders within the City of Westminster. Tree Preservation Order 630 (2015), authorised by the Operational Director Development Planning acting under delegated powers on 4<sup>th</sup> September 2015, was served on all the parties whom the Council is statutorily required to notify and took effect on 16<sup>th</sup> September 2015.
- 1.2 The purpose of a Tree Preservation Order is to protect the tree or trees concerned in the interest of amenity and, to this end, to control their management and replacement if they have to be removed. The presence of a Tree Preservation Order does not prevent works to the tree being undertaken, but the TPO does give the Council the power to control any such works or require replacement if consent is granted for trees to be removed.
- 1.3 Tree Preservation Order 630 (2015) was made following the receipt by the City Council of six weeks notice of intention to remove the Bay tree (T1) submitted under section 211 of the Town and Country Planning Act 1990 (Trees in Conservation Areas). The tree is situated within the St John's Wood Conservation Area. On receipt of such notice the City Council can either raise no objections to the works or make a Tree Preservation Order.
- 1.4 The reasons given for the proposed removal of the tree are:
  - The tree is infected with Ganoderma and has a life expectancy of 5-7 years
  - The tree has destabilised the rear boundary wall, which now needs to be rebuilt
  - The cost of rebuilding the wall is considerable and is not covered by insurance
  - The cost is likely to be recurrent if the tree is left in situ
  - It is unreasonable to expect the applicant to bear the incremental cost of laying new foundations that will accommodate tree root growth as this is far greater than the cost of removing the tree.
- 1.5 Subsequent to the making of the TPO the City Council received one objection.

## **2. Objection by Mr Siddharth Prasad**

- 2.1 On 12<sup>th</sup> October 2015 the Council's Legal Services section received a letter from Mr Siddharth Prasad objecting to the TPO on the grounds that:
  - 2.1.1 The tree has destabilised the rear boundary wall
  - 2.1.2 A structural engineer advises that a section of the wall should be rebuilt



- 2.1.3 The cost of re-building the wall is considerable and is not covered by insurance
- 2.1.4 The cost is likely to be recurrent if the tree is left in situ
- 2.1.5 It is unreasonable to expect the owner to bear the incremental cost of laying new foundations that will accommodate tree root growth as this is far greater than the cost of removing the tree
- 2.1.6 The tree is infected with Ganoderma fungus and has a life expectancy of 5-7 years
- 2.1.7 Ganoderma sp. cannot be treated and therefore the fungus will eventually render the tree prone to root failure
- 2.1.8 The tree poses a potential risk to pedestrians on the adjacent public footpath and users of the garden for which the owner is liable
- 2.1.9 The amenity value of the tree is limited in view of its limited life expectancy
- 2.1.10 A proposed replacement tree in addition to three other replacement trees in the rear garden and one new tree in the front garden will enhance long term amenity value.

### **3. Response to Objection**

- 3.1 The City Council's Arboricultural Officer responded to the objection by letter dated 17<sup>th</sup> November 2015 stating:
  - 3.1.1 The City Council considers the tree is of high amenity value and to make a positive contribution to the character and appearance of the conservation area.
  - 3.1.2 The information submitted in relation to the health and longevity of the tree does not demonstrate that the tree needs to be removed now or in the near future.
  - 3.1.3 The structural engineer suggests rebuilding the top section of the wall which will not involve creating deeper foundations nor is it a recurrent cost.
  - 3.1.4 The Council's District Surveyor does not consider that the nature of the minor cracking in the wall is indicative of ground movement or root action.
  - 3.1.5 A letter from the insurer dated 14 November 2014 does not seem to have been written by an engineer so it is unclear on what basis the insurer thinks that trees are or will remain a hazard.

- 3.1.6 The cost of rebuilding part of the top section of the wall adjacent to the bay tree should not be considerable. The branch impinging on the wall has now been removed so damage is unlikely to occur again provided the tree is maintained properly.
- 3.1.7 By virtue of its size, location and form, the tree makes a significant contribution to visual amenity. In response to a consultation exercise undertaken after receipt of the section 211 notification to remove the tree, six emails/letters were received in support of retaining the tree.
- 3.1.8 The condition of the tree as currently assessed shows the extent of decay at the base to be within acceptable limits. Whilst the presence of the decay fungus Ganoderma is noted, the tree canopy has been reduced recently with the agreement of the Council, which reduces the risk of mechanical failure of the tree.
- 3.1.9 Bay is a relatively common species but it is well suited to the urban environment and contributes to the mitigation of climate change, filters pollutants and provides food and shelter for birds and insects.

#### **4. Further objection by Mr Siddharth Prasad**

- 4.1 On 11 January 2016 the City Council received further objection by email from Mr Prasad stating:
  - 4.1.1 The Council's decision to permit the felling of a healthy Magnolia grandiflora at 9 Hill Road is completely at odds with the Council's approach taken to Mr Prasad's application to fell the diseased bay tree at 11 Hill Road.
  - 4.1.2 The Council is unable to deal equitably with the applications for adjacent semi-detached houses and infers the application to remove the tree at 11 Hill Road has been considered with apparent bias.
  - 4.1.3 Mr Prasad was required to prove the absence of Magnolia grandiflora roots in the garden at 11 Hill Road before a basement application was granted and the Council is now permitting the Magnolia tree to be felled.

#### **5. Response to objection**

- 5.1 The City Council's Arboricultural Officer responded to the objection by letter dated 2 February 2016 stating:
  - 5.1.1 Permission to remove the Magnolia grandiflora at 9 Hill Road was granted subject to various conditions including the requirement to carry out new tree planting in advance of the development taking place.
  - 5.1.2 The Council has not been biased in dealing with the notice of intent to remove the bay tree at 11 Hill Road versus the planning application for

development at 9 Hill Road. Both cases were determined on their own merits.

- 5.1.3 The application for development at 11 Hill Road included the retention of the Magnolia at 9 Hill Road. As the proposed development was very close to the tree it was necessary to demonstrate whether or not the tree was rooting into the area of the proposed development.

## **6. Further representations and additional reports submitted by Mr Siddharth Prasad**

6.1 The Council's legal Services section received further representations by letter dated 8<sup>th</sup> February 2016 from Mr Siddharth Prasad together with additional reports prepared by Martin Dobson Associates and Michael Alexander Ltd.

6.2 Summary of representations:

- 6.2.1 The diseased bay tree is adjacent to a weak and unstable section of boundary wall that must be rebuilt to mitigate the risk of structural failure.
- 6.2.2 Tree roots have contributed to the damage to the wall.
- 6.2.3 The public footpath runs along the unstable section of the boundary wall which presents a public safety issue for which the property owners remain liable.
- 6.2.4 The cost of rebuilding the wall in a manner that protects the tree roots is far greater than the cost of rebuilding if the tree is removed.
- 6.2.5 The amenity value of the diseased tree is limited.
- 6.2.6 Decay is evident in 40% of the radius of the trunk and it has a declining structural integrity.
- 6.2.7 The tree will need to be taken down in 5-10 years and a TPO is unwarranted in the light of the limited life expectancy.
- 6.2.8 The public amenity provided by the bay tree can be replaced by planting a replacement tree.
- 6.2.9 It will be cost effective to fell the bay tree and rebuild the wall whilst consented building works are in progress.

## **7. Support for TPO**

7.1 On 20<sup>th</sup> January 2016 the City Council received support for TPO 630 in response to Planning Application Ref: 14/01733/FULL.

## **8. Ward Member Consultation**

- 8.1 Ward member comments were sought in this matter but no responses have been received. Should any comments be received, they will be reported to the Committee at the meeting.

## **9. Conclusion**

- 9.1 In the light of the representations received from the objector it is for the Planning Applications Sub-Committee to decide whether to confirm the TPO, with or without modification, or whether the TPO should not be confirmed.

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT JAMES HOLLIMAN, PLANNING AND PROPERTY SECTION, LEGAL SERVICES ON 020 7641 2837 (FAX 020 7641 2761) (Email [jholliman@westminster.gov.uk](mailto:jholliman@westminster.gov.uk))

## **Local Government (Access to Information) Act 1985**

### **Appendix 1 - Copy of TPO 630 (2015)**

#### **Background Papers**

1. Six emails/letters received in response to section 211 notice consultation
2. Objection by letter dated 5<sup>th</sup> October 2015
3. Clifton Nurseries garden design proposal dated 5<sup>th</sup> December 2013
4. Arboricultural Solutions letter dated 24<sup>th</sup> June 2015
5. Crawford insurers letter dated 14<sup>th</sup> November 2014
6. Garden Walls Structural Report dated 11<sup>th</sup> December 2013
7. City Council letter dated 17<sup>th</sup> November 2015
8. Email dated 11<sup>th</sup> January 2016
9. Email dated 20<sup>th</sup> January 2016
10. City Council letter dated 2<sup>nd</sup> February 2016
11. Letter dated 8<sup>th</sup> February 2016 with attachments 1-7



**TREE PRESERVATION ORDER**  
**TOWN AND COUNTRY PLANNING ACT 1990**  
**CITY OF WESTMINSTER TREE PRESERVATION ORDER 630 (2015)**

---

The Westminster City Council, in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order –

**Citation**

1. This Order may be cited as The City of Westminster Tree Preservation Order 630 (2015)

**Interpretation**

2. (1) In this Order “the authority” means Westminster City Council.  
  
(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

**Effect**

3. (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.  
(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall –
  - (a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or
  - (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

**Application to trees to be planted pursuant to a condition**

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 16<sup>th</sup> day of September 2015

THE COMMON SEAL OF THE LORD )  
MAYOR AND CITIZENS OF THE )  
CITY OF WESTMINSTER was )  
hereunto affixed by order: )



  
~~Director of Law~~

Principal Solicitor

Seal No  
155  
55045

SCHEDULE  
SPECIFICATION OF TREES

*Trees specified individually*  
(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
<b>T1</b>	<b>Bay tree</b>	<b>11 Hill Road, London NW8 9QE</b>

*Trees specified by reference to an area*  
(within a dotted black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
<b>None</b>		

*Groups of trees*  
(within a broken black line on the map)

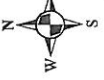
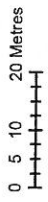
<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
<b>None</b>		

*Woodlands*  
(within a continuous black line on the map)


<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
<b>None</b>		



Scale 1:1,250



Map produced by Corporate GIS Team  
Date: September 2015 Map Reference: 1027

 **City of Westminster**  
Corporate GIS Team

Tree Preservation Order Westminster no. 630:  
11 Hill Road, London, NW8 9QE

© Crown copyright and database rights 2015. OS 100019597



**Principal Solicitor**

Director of Law:

Signed:

DATED 16<sup>th</sup> September 2015

THE TOWN AND COUNTRY PLANNING  
ACT 1990 (AS AMENDED)

CITY OF WESTMINSTER

TREE PRESERVATION ORDER 630 (2015)

11 Hill Road  
London  
NW8 9QE

---

TREE PRESERVATION ORDER  
MADE FOR THE PURPOSES  
OF SECTION 198 OF THE  
TOWN AND COUNTRY  
PLANNING ACT 1990  
(AS AMENDED)

---

Tasnim Shawkat  
Director of Law  
Westminster City Council  
Westminster City Hall  
Victoria Street  
LONDON SW1E 6QP