



City of Westminster

Executive Summary
and Recommendations

**Title of Report: Tree Preservation Order No. 699 – 34 Marlborough
Place London NW8 0PD**

Date: 19 March 2024



Summary of this Report

On 30 October 2023 the City Council made a provisional Tree Preservation Order (TPO) to protect one Bay (labelled T1 on the TPO plan) located at 34 Marlborough Place, London NW8 0PD (the Property). The TPO is provisionally effective for a period of six months from the date it was made (30 October 2023) during which time it may be confirmed with or without modification. If not confirmed, the TPO will lapse after 30 April 2024.

The TPO was made following receipt of six weeks' notice of intent (a S211 notification) to remove one Bay from 34 Marlborough Place. The tree is protected by virtue of its location within the St John's Wood Conservation Area. The reasons given for the proposed removal of the tree are that it has out grown the raised brick planter where it is growing.

In general terms the confirmation of a provisional TPO does not preclude the appropriate management or removal of the protected trees in the future, subject to the merits of a TPO application.

An objection to the TPO was received from the owner of 34 Marlborough Place.

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

Recommendations

The Sub-Committee should decide EITHER

(a) NOT TO CONFIRM Tree Preservation Order No. 699 (2023); OR

(b) TO CONFIRM Tree Preservation Order No. 699 (2023) with or without modification with permanent effect.



City of Westminster

Committee Report

Item No:

Date:

19 March 2024

Classification:

General Release

Title of Report:

Tree Preservation Order No. 699 (2023) – 34
Marlborough Place

Report of:

34 Marlborough Place, London NW8 0PD

Wards involved:

Abbey Road

Policy context:

No requirement to have regard to Development Plan policies when confirming a TPO but special attention must be paid to desirability of preserving enhancing the character and appearance of the conservation area

Notwithstanding the above – the following planning policies are of relevance: 32, 34, 39 of the City Plan 2019 - 2040 April 2021

Financial summary:

No financial issues are raised in this report.

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1. Background

- 1.1 Under the Town and Country Planning Act 1990 (the “1990 Act”) and the Town and Country Planning (Tree Preservation) (England) Regulations 2012 (the “2012 Regulations”) the City Council has the power to make and to confirm Tree Preservation Orders within the City of Westminster. Tree Preservation Order 699 (2023) authorised under delegated powers was served on all the parties whom the Council is statutorily required to notify and took effect on 30th October 2023.
- 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 must be removed. The presence of a Tree Preservation Order does not prevent works to the tree being undertaken, but the TPO does give the City 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 699 was made following the receipt by the City Council of six weeks’ notice of intention to remove one Bay from the front garden of 34 Marlborough Place (shown labelled T1 of the TPO Plan). Under s211 of the 1990 Act it is a defence to the offence of removing a tree in a conservation area if the person undertaking the works has provided 6 weeks’ notice to the local planning authority in advance of doing so. The service of such a notice effectively leaves the City Council in a position where it must either accept the notice and allow for the tree to be removed or to take further protective action by making a TPO.
- 1.4 The Bay is located in the front garden of 34 Marlborough Place, adjacent to the boundary of 32 Marlborough Place. The Arboricultural Officer’s report notes that T1 is growing adjacent to a purple plum tree that is situated closer to Marlborough Place but it is a prominent tree, clearly visible from the public footway and carriageway of Marlborough Place. The tree is about 8 metres tall and is twin-stemmed from ground level with a normal canopy for the species. The tree is considered to have a good form.
- 1.5 The tree is a mature specimen and appears to be in good condition.

- 1.6 The tree has been pruned previously, and a crown reduction by about 1.5m to the previous most recent points of reduction would be appropriate and would not detract from the amenity value of the tree.
- 1.7 The initial reason given by the applicant for the proposed removal of the Bay tree was;
- The tree has outgrown the raised brick planter where it is growing.
- 1.8 The applicant has not submitted any evidence to show that the Bay is the cause of the damage and that the raised planter cannot be repaired without the removal of the tree.
- 1.9 The Bay has high amenity value and makes a significant contribution to public amenity.
- 1.10 The Provisional TPO was subsequently made for the reasons set out above and as more particularly set out in the Arboricultural Officer's report.
- 1.11 Subsequent to making the TPO the City Council received one objection.

2 Objection to the Provisional TPO:

2.1 The City Council's Legal Service received an email and Arboricultural Report dated 13 November 2023 from Tim Moya Associates Consultancy acting on behalf of the Owner of 34 Marlborough Place. The objection to the TPO was on the following grounds:

2.2 Visibility

- Views of the Bay (T1) are effectively limited to a narrow area immediately surrounding the Site (particularly from passing pedestrians rather than vehicles), given that from further distances it is not visible at all. Further, as the Site is located away from a crossroad, views are considered to be limited

only to when passing by the stretch of Marlborough Place between the intersecting roads (of Abbey Road and Loudon Road where there are also views of trees in these streets closer to their respective junctions).

2.3 **Size and form of the tree**

- The tree is considered to be a typical mature bay tree. This Report therefore makes no particular objection, on this element.

2.4 **Future potential of the tree as an amenity**

- This bay tree is located between a brick retaining wall within the Site and the brick boundary wall that denotes the boundary line that separates the Site from 3 Marlborough Place.
- Both wall elements are understood to be cracking; the retaining wall within the Site is in a particularly poor state of repair (see *Figure 3* within the Arboricultural Report dated 13 November 2023), though the boundary wall is also understood to have some cracks that may be caused in part or in whole by this bay tree (and an adjacent plum tree set further towards *Marlborough Place*).
- It is considered feasible for any cracks to the boundary wall to be dealt with in a manner that facilitates the retention of this bay tree, subject to appropriate engineering designs that ensure that any works to the foundation element are appropriately specified and implemented. However, it is considered that repairing the retaining wall within the Site presents significant challenges in retaining this bay tree.
- Notably, considering that this bay tree is effectively located upon the top side of the retaining wall in a narrow strip of land up to the Site boundary, its retention significantly limits the capacity for the existing wall to be repaired in a manner that arrests any significant future risk of damage if all other variables remain consistent.

- For this reason, this bay tree can be considered to now be inappropriate for its location and its removal is considered to be appropriate, and its retention in the context of repairing the retaining wall is considered to be very challenging; therefore, its capacity to realistically provide future amenity is considered to be very limited, in practical terms.

2.5 The rarity cultural or historic value of the tree

- Specifically, the LPA did - in granting consent for the planning permission at *32 Marlborough Place* (as per paragraph 3.1) - approve arboricultural information that referred to this bay tree as a *Category C* specimen in *BS5837:2012* terms; though, it is not clear what criteria were used by the arboricultural consultant. For completeness, a *Category C* tree is defined as a low-quality specimen; depending on the criteria used to determine this.
- This point is considered to be relevant, given that it suggests that the LPA did not view this tree as a particularly notable specimen in arboricultural, landscape, or cultural grounds, when granting consent for this planning application on the 1st of April 2022.
- By this point, the bay tree (i.e., T1) would have been of a similar size to its current form.
- For clarity, it was - according to the details of the planning register - the case that the LPA's arboricultural department had visibility of this information, owing to their consultee response detailed in summary within the associated *Delegated Report*.
- It is however appreciated that the scope of the development at *32 Marlborough Place* may have resulted in this matter regarding the categorisation of the bay tree being overlooked, though this is still considered to be a relevant matter given that the basis for serving the TPO in this instance hinges on its amenity value (including its contribution to the character of the SJWCA).

2.6 **The contribution of the tree to, and relationship with the landscape.**

- The primary tree of importance within its grounds is considered to be the mature sycamore tree (see *Figure 4* and *Figure 5 within the report*) that is located immediately adjacent to the northern pedestrian footpath along *Marlborough Place*. This sycamore is one of many mature trees of a similar size located within similar positions to the front of residential sites along *Marlborough Place*; these larger trees effectively form the primary elements of amenity provided by trees - for clarity, this includes along the multiple sections of *Marlborough Place* that are intersected by other roads at roughly regular intervals.
- Other trees and shrubs are considered to be secondary elements that provide a lesser degree of amenity, which includes this bay tree; views of this bay tree are effectively limited to a narrow area immediately surrounding the Site (particularly from passing pedestrians rather than vehicles), given that from further distances it is not visible at all. Further, as the Site is located away from a crossroad, views are considered to be limited only to when passing by the stretch of *Marlborough Place* between the intersecting roads (of *Abbey Road* and *Loudon Road* where there are also views of trees in these streets closer to their respective junctions).

2.7 **Contribution to the character and appearance of a Conservation Area**

- On the basis that this bay tree is absent (i.e., removed), it is considered that the general character of the Site - and the public realm within the vicinity of the Site will not change to any particular degree; the visual character of the SJWCA will remain analogous to the current situation. Fundamentally, its loss is considered to be of no particular significance, in amenity terms.

3 **Response to Objection**

3.1 The City Council's Arboricultural Officer responded to the objection by letter dated 6 February 2024. The Officer considered the objection and stated the following conclusions: -

3.2 **Visibility**

- The Government guidance says, "The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public." It makes no mention of any difference in views by pedestrians or vehicles; however, I consider the Bay (T1) to be a prominent tree, clearly visible from both the public foot and carriageways of Marlborough Place, especially when approaching the property from either direction along Marlborough Place. The evergreen nature of T1 means it is even more prominent when the deciduous trees that are directly adjacent are out of leaf for approximately half the year. The tree makes a significant contribution to public amenity.

3.3 **Size and form of the tree**

- The Bay (T1) is of a size that it makes a significant contribution to public amenity, its contribution to the character and appearance of the Conservation Area is discussed under the relevant heading, further below.

3.4 **Future potential of the tree as an amenity**

- I consider the tree to be a mature specimen which appears to be in good condition. It has a long life-expectancy. Should evidence be submitted to indicate the cause and severity of the cracking in the retaining wall as such that repair is necessary, alongside options for repair or rebuilding, then the Council could consider the evidence and decide whether or not to confirm the TPO on this basis.
- Alternatively, if a future TPO application is made, the Council could consider whether to grant or refuse consent for the removal of the tree on the basis of the submitted evidence. However, in the absence of sufficient supporting

information, it is not considered that the future potential of the tree is compromised to the extent that the TPO should not be confirmed.

3.5 The rarity, cultural or historic value of the tree

- The granting of planning permission under reference 21/03833/FULL did not approve the submitted tree survey and report; the document is listed on the planning permission as 'for information only' furthermore, even if the tree report had been an approved document, the agreement of the Council to the grade assigned to the tree could not be inferred from a planning consent. As such I do not consider that the planning permission has any bearing on the suitability of the Bay (T1) to be included within the TPO.
- Whilst Bay trees are relatively common in Westminster, and this tree is not known to have a specific cultural or historic value, but trees are a key component of the Conservation Area, and so T1 contributes to this general cultural value.

3.6 The contribution of the tree to, and relationship with, the landscape.

- The large mature tree in the front garden is a Lime, not a Sycamore. Whilst the Lime is larger than the Bay (T1) the scale and form of T1 is such that it is in proportion with 34 Marlborough Place. The tree is close to the side boundary wall and is growing in a raised planter, but the lowest branches are clear of the top of the wall, and it is not unusual for mature trees to be growing close to garden boundary walls within the borough of Westminster.
- The tree is about 4m from the front of 34 Marlborough Place, but the relationship between the building and the tree is not uncomfortably close, and the bay could be pruned to limit any perceived encroachment towards the property.
- The presence of larger trees within Marlborough Place does not justify the removal of the Bay (T1). T1 is considered to be of typical size and form for the species, to be suitable in its location and to make a positive contribution to the

local landscape. The removal of T1 would therefore be of detriment to the local landscape.

3.7 **Contribution to the character and appearance of a Conservation Area**

- Marlborough Place is characterised by an informal mix of trees in front gardens, of different sizes and species. It is not only the large-species trees which contribute to this character.
- The mixed ages, sizes and species of the tree population on Marlborough Place provide variety and contrast and contribute to the Arcadian character of St Johns Wood. The size of T1 does not detract from its contribution. As such the loss of the Bay (T1) would cause harm to the character and appearance of the Conservation Area.

3.8 **Other factors**

- An objection on other factors was not raised, but for completion of all the government criteria I have included my assessment, below.
- Trees contribute generally to mitigation of climate change, by absorbing and storing carbon dioxide. Invertebrates inhabit trees, and these form a potential food source for birds. The trees may also provide cover and shelter and potential roosts for birds. They can assist in mitigating air pollution by filtering harmful airborne pollutants. The mitigation of air pollution is a high priority in Westminster. The Bay (T1) has a general contribution to these factors.

4. **Response letter from Tim Moya Associates Consultancy**

4.1 The City Council received a letter dated 3 March 2024. This letter is in response to the City Council's Arboricultural Officer's letter dated 6 February 2024. The letter made the following comments:

4.2 **Visibility**

- The bay tree does have public visual amenity; this matter is not contested. It is however, contested that it has *significant* public visual amenity. It is set back from the road, and from all surrounding vantages it is always at least partially obstructed by trees that are set further towards the public realm.
- It is not considered reasonable to conclude that this tree has significant public visual amenity, therefore (nor is it considered reasonable to assert that this is a *prominent* tree – it is not); it is reasonable to conclude that the bay tree has some visual amenity, though that matter is not being contested.
- It is considered that the loss of this bay tree would not be detrimental to the prevailing visual character of the public realm, owing to the presence of other trees in the immediate surrounding vicinity (of which some are larger and some are similarly sized). In determining whether trees ought to be subject to statutory protection, this is a necessary element of consideration else one may find themselves in a position where all trees with public visual amenity are protected.
- There ought to be more nuance to the situation, which focusses on quite how a tree visually contributes to the character of an area. In the case of this bay tree, it does provide some contribution, though it is not prominent nor significant and consequently upholding its statutory protection is considered unreasonable.
- By contrast, if the larger trees set towards the road were removed (comprising species include lime etc.) then this would quite demonstrably undermine the visual character of the local area (as these are large trees with more visual prominence).

4.3 **Future potential of the tree as an amenity**

- It is considered that the position of this bay tree in relation to the surrounding retaining and boundary walls is clearly indicative of an issue that ought to require the removal of the tree, if a practical and pragmatic view of the current

situation (relating to obvious structural damage) were to be undertaken. It is not considered reasonable to infer that all options must be exhausted to demonstrate that the tree cannot be retained, given that it is not considered that this tree has the level of public visual amenity (i.e., not in prominence nor significance) that ought to warrant that level of investigation. The evidence is considered to be sufficiently clear, at this time.

- Fundamentally, this bay tree is considered to be so close to the retaining wall (that holds back the soil it is at least to a significant extent growing in and relying on for stability) that it has both directly contributed to this damage and also directly restricts the capacity to repair it in a practical and pragmatic manner. To aim to underpin or entirely reconstruct this retaining wall with the bay tree remaining in place is considered to carry a very high risk of undermining the bay tree; it also significantly affects the capacity to undertake repair works that would likely require an unreasonable deviation from standard working designs and methodologies.
- It is considered inappropriate for any tree to be located in the location of this bay tree, on the basis that the boundary wall and retaining wall are both present. It is not feasible to remove the boundary wall and it isn't considered reasonable to argue that the retaining wall ought to be removed and not replaced. It is considered reasonable to remove the tree to repair the retaining wall, by comparison – specifically, given that this bay tree is not considered to have the level of public visual amenity that would warrant operating on a different basis.
- If a tree were to replace this bay tree (in the event that its removal was secured by whatever means) then a new tree ought to be planted elsewhere within the frontage of *34 Marlborough Place*, to ensure that the issue discussed here regarding structural damage is unlikely to repeat itself. It has already been expressed by the homeowner during a meeting at the property with representatives of Westminster City Council that new trees would be planted in the frontage to the dwellinghouse, though at the lower garden level

where the future risk of damage to nearby structures from tree root growth is much lower.

4.4 **The rarity, cultural or historic value of the tree**

- It is not considered reasonable to argue that the planning context isn't relevant to the situation, because it was reviewed by *Westminster City Council* and every option was there to query the categorisation of this bay tree. Technical elements of planning permission such as whether any arboricultural report formed part of a formal decision (i.e., with planning conditions) are considered to be superfluous to this observation.
- This matter aside, it is evident that there is no particular merit held by this bay tree in terms of its rarity, etc. It is not considered reasonable to argue that it has a general cultural value solely because it is located within a *Conservation Area*; it is by contrast more reasonable to state that it has general visual amenity benefits (rather than cultural ones), though this matter has already been discussed above in relation to the considered role this bay tree plays in public visual amenity.

4.5 **The contribution of the tree to, and relationship with, the landscape**

- It is considered that the position of this bay tree in relation to the boundary and retaining walls is unacceptably close; there is very little space between the two walls and the tree occupies much of this space. Whether it could be pruned is not considered to be relevant, in terms of the structural damage caused to the retaining wall (that is a matter that has been discussed above).
- With regard to whether the presence of other trees does or does not justify the removal of this bay tree, this is considered to be hugely relevant. Again, the reasons have been discussed above, though fundamentally this bay tree is not considered to be prominent nor significant in terms of its public visual amenity, which is greatly influenced by the presence of larger and similarly sized trees in the immediate surrounding area. If those other trees were all absent then absolutely one could argue that this bay tree has much greater

public visual amenity (and its loss by comparison would be detrimental to the character of the local landscape).

4.6 **Contribution to the character and appearance of a Conservation Area**

- Points regarding the visual amenity benefits of this bay tree has already been made within this letter. It is however considered important to note that whilst an audit of a *Conservation Area* may point to the constituent parts that make up its character, there is still a requirement to reasonably consider nuance in ascertaining whether in the case of trees the loss of (in this case a less prominent) is on balance to all other factors acceptable. This is because one would find themselves in a position where all trees are subject to a *Tree Preservation Order* in the event that they were proposed for removal (regardless of their prominence or significance to public visual amenity).

4.7 **Other factors**

- The loss of this bay tree is not considered to contribute detrimentally to any great extent the general ecology of the jurisdictional area of *Westminster City Council*.

5. **Response letter from the City Council's Arboricultural Officer**

5.1 The City Council Arboricultural Officer responded by letter dated 7 March 2024. The letter made the following comments:

5.2 **Visibility**

- In respect to visibility, I maintain my position that the Bay (T1) is a prominent tree, clearly visible from Marlborough Place, and that the tree makes a significant contribution to public amenity.
- Neither the relevant legislation (The Town and Country Planning Act 1990) or current Government guidance (Tree Preservation Orders and trees in conservation areas) refers to a requirement for a nuanced approach, however, the amenity of the tree is an overall consideration of the points

discussed under the relevant headings that make up this letter, which includes the tree's contribution to the landscape and Conservation Area.

- If it is considered expedient in the interests of amenity to make a TPO for other nearby trees, then these trees will also be considered for inclusion within a TPO, based on their individual merits. However, the presence of nearby trees is not considered to reduce the visibility of the bay tree to the extent that it does not merit a TPO.

5.3 Size and form of the tree

- No need for further comment.

5.4 Future potential of the tree as an amenity

- I do not agree that my previous reply inferred that all options must be exhausted. Evidence has not been submitted to show the extent of damage to adjacent walls or that they cannot be repaired without the removal of the tree. In the absence of sufficient supporting information, it is not considered that the future potential of the tree is compromised to the extent that the TPO should not be confirmed. If a future TPO application is made, the Council could consider whether to grant or refuse consent for the removal of the tree on the basis of the submitted evidence.

5.5 The rarity, cultural or historic value of the tree

- My previous points remain, which are in summary, that I do not consider that the categorisation of the tree as a relatively low-grade specimen in a report submitted with planning application 21/03833/FULL has any bearing on the suitability of the Bay (T1) to be included within the TPO, and trees are a key component of the Conservation Area to which T1 contributes to this general cultural value.

5.6 The contribution of the tree to, and relationship with, the landscape.

- My previous points remain, namely that; the presence of larger trees within Marlborough Place does not justify the removal of the Bay (T1), and as above,

the location of the tree in relation to the retaining and boundary walls should not preclude the confirmation of the TPO in the absence of adequate supporting evidence. T1 is considered to be of typical size and form for the species, to be suitable in its location and to make a positive contribution to the local landscape. The removal of T1 would therefore be of detriment to the local landscape.

5.7 **Contribution to the character and appearance of a Conservation Area**

- Contribution to the character and appearance of a Conservation Area is just one element of a tree's characteristics when considering suitability for inclusion within a TPO.
- I maintain the position that the loss of the Bay (T1) would cause harm to the character and appearance of the Conservation Area.

5.8 **Other factors**

- I maintain that the Bay (T1) has a general contribution to the other factors given in my previous reply.

6. **Email in support of the TPO:**

6.1 The Council's Legal Service received an email in support of the TPO on the grounds that:

- We definitely object to the felling of this tree. We would want a permanent TPO. Felling the tree would very much reduce the natural greenery and environment of the street, and make that whole side sparse. It would be a real shame to lose yet another large tree to a redevelopment.

7. **Conclusion**

7.1 In light of the representations received from the objectors it is for the Planning Applications Sub-Committee to decide EITHER

(a) NOT TO CONFIRM Tree Preservation Order No. 699 (2023); OR

(b) TO CONFIRM Tree Preservation Order No. 699 (2023) with or without modification with permanent effect.

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT ROSS FLETCHER, LEGAL SERVICES (Email Rfletcher@westminster.gov.uk) OR GEORGIA HEUDEBOURCK, LEGAL SERVICES (Email gheudebourck@westminster.gov.uk)

Local Government (Access to Information) Act 1985

Background Papers

1. Copy of Provisional TPO 699 (2023)
2. Objection from Tim Moya Associates Consultancy dated 13 November 2023
3. Response letter from the City Council's Arboricultural Officer dated 6 February 2024
4. Further response letter from Tim Moya Associates Consultancy dated 3 March 2024.
5. Further response letter from the City Council's Arboricultural Officer dated 7 March 2024
6. Email in support of the TPO dated 5 March 2024.
7. Report of Council's Arboricultural Officer dated 25 October 2023 recommending making of the Provisional Order