



City of Westminster

Executive Summary
and Recommendations

Title of Report: Tree Preservation Order No. 700 – 162 Westbourne
Grove London W11 2RW

Date: 19 March 2024



Summary of this Report

On 8 November 2023 the City Council made a provisional Tree Preservation Order (TPO) to protect one Silver lime (labelled T1 on the TPO plan) located at 162 Westbourne Grove London W11 2RW (the Property). The TPO is provisionally effective for a period of six months from the date it was made (8 November 2023) during which time it may be confirmed with or without modification. If not confirmed, the TPO will lapse after 8 May 2024.

The TPO was made following receipt of six weeks' notice of intent (a S211 notification) to remove one Silver lime from 162 Westbourne Grove. The tree is protected by virtue of its location within the Westbourne Conservation Area. The reasons given for the proposed removal of the tree are that it has outgrown its location.

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 162 Westbourne Grove.

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. 700 (2023); OR

(b) TO CONFIRM Tree Preservation Order No. 700 (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. 700 (2023) – 162 Westbourne Grove

Report of:

162 Westbourne Grove, London W11 2RW

Wards involved:

Bayswater

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.

Report Author:

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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 700 (2023) authorised under delegated powers was served on all the parties whom the Council is statutorily required to notify and took effect on 8 November 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 700 was made following the receipt by the City Council of six weeks’ notice of intention to remove one Silver lime from the rear garden of 162 Westbourne Grove (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 Silver lime is located in the rear garden of 162 Westbourne Grove, adjacent to the boundary with Pentagram Yard. The Arboricultural Officer’s report notes the crown of the tree is clearly visible above 1 to 5 Needham Road, when looking from Needham Road to the east.
- 1.5 The Silver lime (T1) is about 15m tall, it is single-stemmed with a graft point at about 1m above ground level; the lower trunk of the tree leans slightly away from the rear boundary and self-corrects from about 5m to a more vertical stem from above 7m above ground level. The tree is considered to have a good form.

- 1.6 The tree is a mature specimen and appears to be in good condition. It has a long life-expectancy.
- 1.7 The tree has been pruned recently and the tree could be occasionally re-pruned to the same reduction points without detracting from the amenity value of the tree.
- 1.8 The scale and form of the Silver lime (T1) is such that it is in proportion with 162 Westbourne Grove. The tree is close to the boundary wall of what appears to be a studio or garage building within Pentagram Yard, but there is adequate clearance from the tree and the wall, the lowest branches are clear of the top of the wall and building, and it is not unusual for mature trees to be growing close to boundary walls or buildings within Westminster. The Silver lime (T1) can be occasionally re-pruned to limit any perceived encroachment towards the property. The Silver lime (T1) is considered to make a positive contribution to the townscape and to be suitable in its location.
- 1.9 The initial reason given by the applicant for the proposed removal of the Silver lime was;
- The tree has outgrown its location.
- 1.10 The Silver lime (T1) makes a valuable contribution to amenity and to the appearance of the townscape, and makes a positive contribution to the character and appearance of the conservation area.
- 1.11 The Provisional TPO was subsequently made for the reasons set out above and as more particularly set out in the Arboricultural Officer's report.
- 1.12 Subsequent to making the TPO the City Council received one objection.

1 Objection to the Provisional TPO:

- 2.1 The City Council's Legal Service received an email and letter dated 7 December 2023 from the Owner of the Property. The objection to the TPO

was on the following grounds:

- In November 2022, a slightly smaller tree located in the neighbouring property, 164 Westbourne Grove, fell at around 3 am one morning, during stormy windy weather and caused just over £285,000 worth of damage. Two cars in St Giles house carpark were destroyed and the bordering walls on either side of my property collapsed with the fall.
- The planning permission for the reconstruction of both party walls i.e. St Giles house/162 Westbourne Grove/ 164 Westbourne Grove, took circa 4 months to get the approval from Westminster Planning department and in total a whole year for the project to be completed. All 3 properties' insurance companies were involved. The insurance did not cover the destruction of our garden or the replanting of new trees which were destroyed by the fall. The claim resulted in a material increase in our insurance premia.
- Fortunately the tree fell across the gardens and not onto any of our residential buildings in which case it could have easily caused fatalities and much more extensive damage to our properties-the tree fell at around 3 am when residents would have been in bed and therefore, sitting ducks – since the bedrooms are mainly located at the back in all of the adjacent properties, including the block of flats St Giles House most exposed.
- When the Westminster Arboriculture Officer, Jamie Newman visited the site in October he indicated to me that he did foresee even giving me permission to reduce the height of the tree because this would damage the health of the tree. I am making the presumption that residents' safety should be prioritised over the health of the tree. At the least you should consider allowing me to reduce the size to the extent that the tree no longer poses a threat to the neighbouring buildings if it falls.

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: -

- It is unfortunate that the tree that fell caused just over £285,000 worth of damage. Photographs (supplied by a tree surgeon) of the tree that fell showed it was diseased and had extensive basal decay, and my inspection of the remains of the tree stump confirmed this. Whilst it was unfortunate the neighbouring tree fell and caused damage it is my opinion the tree fell in high winds because of the basal decay.
- I consider that whilst the tree is close to the boundary with Pentagram Yard the relationship between the wall of the building within Pentagram Yard and the tree is not uncomfortably close, and the Silver lime (T1) could be periodically re-pruned to address any perceived inconvenience.
- I do not consider the issue of the other tree (that had basal decay) falling and the subsequent issues you say you had with planning permission, project completion and increased insurance premia have a bearing on the removal of the Silver lime (T1) to be included in the Order.
- I also understand that the tree that fell was also within falling distance of properties and you consider that if it fell towards the rear elevation of properties, where people were sleeping, it could have caused greater damage to property or harm to people or fatalities, and you are also concerned that the Silver lime (T1) could also fall and cause damage or fatalities.
- It is common for large mature trees (such as T1) within the Borough of Westminster to be within falling distances of property and people. Trees are living and dynamic structures and as such all trees within the Borough of Westminster carry a risk of failure and there are many large mature trees in

similar locations that are also protected by TPOs. However, it would be a disproportionate response to remove healthy trees because a nearby tree died or fell.

- I hope that it will reassure you that I consider the reason the other tree fell in high winds was because it had extensive basal decay and that when I inspected the Silver lime (T1) in October 2023 there were no obvious signs of decay or disease. I consider the tree to be of good form and in good condition, with a long-life expectancy. It would not be justified to remove T1 because it is within falling distance of property or people, and because another nearby tree fell in high winds.
- In December 2022 Westminster City Council raised no objections (reference 22/07769/TCA) for a crown reduction to T1. At the time of my last visit in October 2023 the tree had been pruned and you asked about further pruning to create a much smaller tree, I advised that further pruning would harm the tree and without sufficient justification would likely be refused consent.
- When trees are pruned this creates wounds which act as entry points for decay. Large wounds can lead to significant decay, which can increase the risk of branch/tree failure and can shorten the trees' lifespans. If the trees are regularly pruned back to the same points, then they can create defensive barriers against the decay. If they are pruned below the same points the barriers to decay are lost. Furthermore, heavier pruning creates more substantial wounds and removes resources the trees use for normal functions, including defence, thereby reducing the overall physiological conditions of the trees and their ability to defend against pathogenic disease and decay.
- I appreciate that the tree is large, but heavy pruning of such a mature specimen would be detrimental to its condition and amenity value, would put the tree at significantly greater risk of infection by disease and decay that

would shorten its lifespan, however periodic re-pruning to the same (recent) reduction points to maintain the size of the tree is likely to be acceptable.

4. Further response from the Owner of the Property

4.1 The City Council's Legal Service received an email and letter dated 16 February 2024 from the Owner of the Property. The letter was in response to the City Council's Arboricultural Officer letter dated 6 February 2024. The following points were made:

- I understand your assessment regarding the decay of the neighbouring tree and its unfortunate consequences. However, I must emphasize the urgent need for action to prevent similar incidents in the future. While the issues with planning permission and insurance may not directly relate to the TPO, they underscore the importance of prioritizing safety and risk mitigation.
- Your explanation regarding the risk assessment of mature trees within the borough is noted. However, given the potential catastrophic consequences of a tree falling onto residential buildings, I urge you to reconsider the decision. Safety should be paramount, and proactive measures should be taken to mitigate any potential risks.
- Thank you for correcting the typographical error. I acknowledge the importance of maintaining the health and integrity of the tree. However, given the circumstances, I urge you to reconsider the possibility of further pruning or reduction to ensure the safety of residents and properties in the vicinity.
- T1 towers over the wall separating Pentagram yard, the car park of St Giles House and indeed the rear of my property all of which would be crushed were the tree to fall in high winds. Human beings and living and dynamic as well as trees.
- I appreciate the clarification regarding legal liabilities and responsibilities. I will certainly consider having the tree assessed by a qualified arboriculturist as

suggested. My legal notice remains in place, however on the grounds that in the event of another incident, I shall hold Westminster Council responsible, as per the definition of legal notice.

5. Response to the Owner of the Property

5.1 The City Council's Arboricultural Officer responded to the objection by letter dated 27 February 2024. The Officer considered the objection and stated the following conclusions: -

- In basic terms, risk assessment is an assessment of how likely it is that someone could be harmed or that property is damaged and how serious it could be. I agree that if the tree were to fall the potential consequences could be catastrophic (because of the size and location of the tree), but it does not automatically follow that the tree is likely to fall. I note that you will consider having the tree assessed by a qualified arboriculturist, this would be an appropriate proactive measure, I also recommend you ask specifically for a tree related risk assessment.
- The making or confirmation of the TPO does not prevent you from making an application for pruning, if the reason for the works is because of the condition of the tree (e.g. is diseased or you have fears that it might break or fall) the legislation requires that you provide written arboricultural advice or other diagnostic information from an appropriate expert. If the City Council refuses consent, you will have the right to make an appeal to the Planning Inspectorate.
- For clarity my previous reply also provided that the Town and Country Planning (Tree Preservation) (England) Regulations 2012 sets out that the Council could be liable for costs arising from a decision to refuse consent to a TPO application (Regulation 24) but the Council cannot be found liable for any claim for compensation for costs arising as a result of the making of the TPO. I shall leave any further legal matters to the City Council's legal department.

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:

- I hope that it would be preserved for nature and bird life. It is healthy and has a good structural shape.

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. 700 (2023); OR

(b) TO CONFIRM Tree Preservation Order No. 700 (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 700 (2023)
2. Objection from the Owner of the Property dated 7 December 2023
3. Response letter from the City Council's Arboricultural Officer dated 6 February 2024
4. Further Objection from the Owner of the Property dated 16 February 2024.
5. Response letter from the City Council's Arboricultural Officer dated 27 February 2024
6. Email in support of the TPO
7. Report of Council's Arboricultural Officer dated 3 November 2023 recommending making of the Provisional Order