



City of Westminster

Follow-On Agenda

Title:

Planning Applications Sub-Committee (4)

Meeting Date:

Tuesday 26th September, 2017

Time:

6.30 pm

Venue:

Room 3.1, 3rd Floor, 5 Strand, London, WC2 5HR

Members:

Councillors:

Angela Harvey (Chairman)
Iain Bott
Jonathan Glanz
Barbara Grahame



Members of the public are welcome to attend the meeting and listen to the discussion Part 1 of the Agenda

Admission to the public gallery is by ticket, issued from the ground floor reception from 6.00pm. If you have a disability and require any special assistance please contact the Committee Officer (details listed below) in advance of the meeting.



An Induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter. If you require any further information, please contact the Committee Officer, Tristan Fieldsend, Committee and Governance Officer.

**Tel: 020 7641 2341; Email: tfieldsend@westminster.gov.uk
Corporate Website: www.westminster.gov.uk**

Note for Members: Members are reminded that Officer contacts are shown at the end of each report and Members are welcome to raise questions in advance of the meeting. With regard to item 2, guidance on declarations of interests is included in the Code of Governance; if Members and Officers have any particular questions they should contact the Head of Legal & Democratic Services in advance of the meeting please.

AGENDA

PART 1 (IN PUBLIC)

- | | | |
|----------|--|----------------|
| 4 | TREE PRESERVATION ORDER NO. 636 (2017) - 15-17 The Close, London, NW8 0PG | (Pages 1 - 46) |
|----------|--|----------------|

Charlie Parker
Chief Executive
18 September 2017



City of Westminster

Executive Summary and Recommendations

**Title of Report: Tree Preservation Order 636 (2017)
The Close, 15-17 Marlborough
Place, London, NW8 0PG**

Date: 26th September 2017





City of Westminster

Executive Summary and Recommendations

**Title of Report: Tree Preservation Order 636 (2017)
The Close, 15-17 Marlborough
Place, London, NW8 0PG**

Date: 26th September 2017

Summary of this Report

The City Council has made a Tree Preservation Order (TPO) to protect one silver birch located in the garden at The Close, 15-17 Marlborough Place, London, NW8 0PG. The TPO is provisionally effective for a period of six months from 12th April 2017 during which time it may be confirmed with or without modification. If not confirmed, the TPO will lapse after 12th October 2017.

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 silver birch 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 David Clarke Chartered Landscape Architect on behalf of Mr Novuzov.

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. 636 (2017) OR

(b) Confirm Tree Preservation Order No. 636 (2017) with or without modification with permanent effect.



City of Westminster

Committee Report

Item No:	
Date:	26 th September 2017
Classification:	General Release
Title of Report:	Tree Preservation Order 636 (2017) The Close, 15-17 Marlborough Place, London, NW8 0PG
Report of:	The Director of Law
Wards involved:	Abbey Road
Policy context:	
Financial summary:	No financial issues are raised in this report.
Report Author:	Daniel Hollingsworth
Contact details	dhollingsworth@westminster.gov.uk

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 636 (2017) authorised by the Director of Planning acting under delegated powers on 6th April 2017 was served on all the parties whom the Council is statutorily required to notify and took effect on 12th April 2017.
- 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 636 (2017) was made following the receipt by the City Council of six weeks notice of intention to remove the silver birch (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 conversation 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 :
 - Damage in the crown and bleeding to the trunk were noted in a recent survey. Further assessment and a climbing inspection resulted in a recommendation that the tree should be felled, due to a diagnosis of honey fungus infection and decay in wounds in the crown created during previous pruning operations.
- 1.5 Subsequent to the making of the TPO the City Council received one objection.

2. Objection by Mr David Clarke Chartered Landscape Architect and Consultant Arboriculturist Limited on behalf of Mr Novuzov

- 2.1 On 28th April 2017 the Council's Legal Services section received a letter dated 28th April 2017 from Mr David Clarke (**Appendix A**) objecting to the TPO on the grounds that:
 - 2.1.1 The Council appears to have not viewed the tree and no amenity assessment has been made.
 - 2.1.2 A report produced by Urban Forestry as part of the application to remove the tree advised that bleeding canker identified on the main stem of the tree was an indication of the presence of honey fungus, a pathogen that would kill the tree and reduce its safe life expectancy to a maximum of 5 years.

- 2.1.3 Local residents, pedestrians and vehicles are at risk on the adjacent road and footpath as well as the adjacent property.
- 2.2 On 3rd August 2017 the Council's Legal Services section received further correspondence from Mr David Clarke (**Appendix B**).
- 2.2.1 Bark samples from the silver birch had been sent to Forest Research in order to identify the pathogen affecting the tree. The sample results had identified the pathogen as *Phytophthora pseudosyringae*.

3. Response to Objection

- 3.1 The City Council's Arboricultural Officer responded to the objection by letter dated 4th September 2017 (**Appendix C**):
 - 3.1.1 The Officer undertook an amenity assessment of the tree according to the advice in National Planning Practice Guidance, and concluded that by virtue of its size and location, the tree makes a useful contribution to the visual amenity of the area.
 - 3.1.2 The tree is approximately 12m in height, and is located in the garden of the property adjacent to Loudoun Road. It is a mature tree. The tree is clearly visible from public locations on Marlborough Place and Loudoun Road. The tree has been crown reduced previously but this surgery has not had a detrimental effect on the tree form.
 - 3.1.3 The tree makes a positive contribution to the townscape. Trees are an important component of the character and appearance of the conservation area.
 - 3.1.4 The future potential of the tree as an amenity is dependent on its condition. Testing of bark samples suggest the cause of the bleeding canker is an organism called *Phytophthora pseudosyringae*. *Phytophthora* may kill birch trees but not always. The outcome of infection depends on the general health of the tree determined by climate, nutrient availability & competition. Trees can recover from the infection.
 - 3.1.6 Measures such as soil improvement, aeration and mulching could be implemented to improve growing conditions and the life expectancy of the tree.
 - 3.1.7 With regard to the decay in the upper canopy, appropriate pruning can reduce the risk of limb failure and crown reduction would help to decrease wind loading on the affected limbs.

4. Ward Member Consultation

- 4.1 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.

5. Conclusion

- 5.1 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 DANIEL HOLLINGSWORTH, PLANNING AND PROPERTY SECTION, LEGAL SERVICES ON 0207 641 1822 (FAX 020 7641 2761)
Email dhollingsworth@westminster.gov.uk

Local Government (Access to Information) Act 1985

Copy of TPO 636 (2017)

Background Papers

Appendix A – Objection letter from David Clarke dated 28th April 2017 including report from Urban Forestry dated 8th December 2016

Appendix B – Email from David Clarke dated 3rd August 2017

Appendix C – Response letter from Arboricultural officer dated 4th September 2017

Appendix A

David Clarke Chartered Landscape Architect and Consultant Arboriculturist Limited

Arboricultural Officer
Westminster City Council
Westminster City Hall
64 Victoria Street
London SW1E 6QP

28th April 2017

Dear Tom,

**Re: Objection to Tree Preservation Order (TPO) 636 (2017) at 15-17 The Close,
Marlborough Place, NW8 0PG'**

I am writing on behalf of my Client (Mr Novuzov) to object to a TPO that was recently served by Westminster City Council (The Council) on his property (17 Marlborough Place, NW8 0PG). The TPO is for an individual Silver Birch (T1) which is located to the site frontage with Loudoun Road. See attached copy of the TPO. Guidance on TPO procedures is set out within the TPO Planning Practice Guidance (PPG) provided by the Department for Communities and Local Government (DCLG).

The property is located at the junction of Marlborough Place and Loudoun Road. This has a relatively small garden area with the property set to the rear site boundary. There is an existing TPO on the site – St Marylebone No. 10. This TPO originally included two Almond trees, two Lime Trees and a Beech. Written permission to remove the Beech was granted on 26th October 1993. The Council has stated that a Maidenhair Tree (*Ginkgo biloba*) on the frontage with Marlborough Place may have been planted to replace this tree. These 5 no. trees contribute to the amenity of the area and occupy a significant part of this small garden area.

My client's decision to apply for the removal of the Silver Birch (T1) was made following an initial assessment by myself (November 2016) and a detailed report by Urban Forestry (December 2016) – see attached as Appendix A. Together we have over 60 years' experience within the Arboricultural industry. The detailed report included a climbing inspection – to look at decayed pruning wounds in the crown - and a visual assessment of the bleeding canker on the lower stem. It was concluded that the bleeding canker was a sign of Honey Fungus (probably *Armillaria mellea*) which is actively pathogenic and will kill the tree. The decayed pruning wounds have significantly reduced the structural integrity of the upper crown. It was considered that the tree had a limited safe life expectancy - around a maximum of 5 years - and that it would be prudent to remove this tree and the risk associated with its potential failure before it failed. My client would be happy to plant a replacement tree in a similar position.

It is understood that the Council has not accessed the site and have only viewed the tree from the adjacent road(s). The decision to ignore the recommendation of Urban Forestry and protect the tree has therefore not been based on any additional assessment or investigation of the tree which would refute the report's conclusion. My client is happy to arrange for the Council to access the site and assess the tree fully. The PPG states that when considering

whether trees should be protected by a TPO, authorities are advised to develop ways of assessing the amenity value of trees in a structured and consistent way. I am not aware of any such an assessment being made.

It is clearly inappropriate to TPO a tree which is dead, dying or dangerous. Honey Fungus is a progressive organism that causes root death and the eventual death of the tree. The extent of the root death cannot be determined by a visual inspection but will make the tree unstable and liable to windthrow and stem breakage. As the extent of root death is unknown this failure can be unpredictable. As the Council has refused the removal of this tree the liability for this failure will therefore be carried by them. However my client must shoulder the burden of having this failing tree on his property and any impact its failure would bring. Those at risk include local residents, pedestrians and vehicles on the adjacent road and footpath as well as the adjacent property.

It is therefore my professional opinion that the protection of this tree by a TPO is not justified and that TPO 636 should not be confirmed.

If you should require any further information, or wish to access the site and discuss this further, please contact me.

Yours sincerely

Attachments:

Copy of TPO 636 (2017) - 15-17 The Close, Marlborough Place, NW8 0PG'

Appendix A – Report by Urban Forestry on Silver Birch (T1)

Offices in Hertfordshire and Warwickshire
Head Office and Correspondence Address: Willowbrook House,
Church Lane, Fillongley, Warwickshire, CV7 8EW

Telephone:



URBAN FORESTRY – TREE SURGEONS



Tree Work to BS 3998 (2010)

Arboricultural Association Approved Contractor **AC2135**

VAT Reg. No.

f Fax/Telephone

Bedmond Bungalow
Bedmond Road, Abbots Langley, Herts. WD5 0RP

Mobile:
Mobile:
Email:

Our Ref:

8th December 2016

David Clarke Chartered Landscape Architect and Consultant Arboriculturist Ltd
Willowbrook House
Church Lane
Fillongley
Warwickshire
CV7 8EW

REPORT OF FINDINGS OF VISUAL INSPECTION CARRIED OUT AT 11.17AM ON FRIDAY 2ND DECEMBER

Re Site – 17 Marlborough Place, London NW8 0PG

1. Introduction

1.1 The subject tree is a silver birch (*Betula pendula* Roth). It is located close to the south western boundary of No. 17 Marlborough Place, London NW8 0PG. The footpath of Loudon Road passes beneath the canopy of the tree.

Report of findings of visual inspection on birch tree at :
No. 17 Marlborough Place, London NW8 0PG

Date: 8th December 2016 - ..

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1.2 Visual appraisal of the birch tree from ground level showed that it is of mature age class and in the last one third of its probable life expectancy (see photograph 9 Appendix 1). It has, in recent years been heavily reduced, the reduction cuts are centred on the main scaffold branches.

1.3 Despite the reduction works certain aesthetic (and ecological) amenity remains and the tree is visible from both Marlborough Place and Loudon Road. Numerous other trees are present and the overall landscape character is that of a lightly wooded area.

2. The Inspection

2.1 I made my inspection of the birch tree at 11.17am on Friday 2nd December 2016 in the company of my lead climber Rob Verney. Both myself and Rob are qualified in climbing operations and aerial rescue. A brief resume of my professional arboricultural qualifications is appended to this report (see Appendix 2).

2.2 My inspection focused on two sections of the tree, namely the lower trunk and the scaffold branches including a pruning wound located at around 4m above ground level on the northeast side of the upper trunk.

2.3 I inspected and photographed the bleeding canker on the lower trunk (see photographs 1, 2, 3 & 4 Appendix 1), and also viewed the pruning wound at 4m above ground level (see photograph 5 Appendix 1). Rob climbed higher and looked at the old pruning wounds where the scaffold branches had been truncated. He too, took photographs of the wounds and associated areas (see photographs 6, 6a, 7, 7a, 8, 8a & 8b Appendix 1).

3. Findings

3.1 My inspection of the lower trunk revealed bleeding canker present from close to the ground to around two metres above (see photographs 1, 2, 3 & 4 Appendix 1). The canker seemed to be longstanding, much of the historic residue having 'crusted over'. It is however, progressive, this being indicated by actively suppurating cankers (see photographs 2 & 3 Appendix 1).

3.2 I viewed the pruning wound located on the trunk at around 4m on the northeast side of the upper trunk and took a single photograph (see photograph 5 Appendix 1). The wound has resulted from a poorly made 'flush cut'. Callus has formed around most of the wound circumference and as would be expected this has physiologically changed into woundwood. The wound surface presently remains firm to the touch, though the lower area which is probably poorly supplied with assimilates is softening a little.

3.3 Rob Verney's inspection of the wounds in the upper crown was visual only. No probing was undertaken as this may have caused further damage to the tree. Eight photographs were taken which are appended at the back of this report as Appendix 1.

4. Discussion

4.1 It is possible that the bleeding canker present on the lower trunk of the birch is a sign of honey fungus. Sinclair & Lyon writing in 'Diseases of Trees and Shrubs' aver that such canker is often a positive sign of this fungus. I was unable to find more positive indications that honey fungus (*Armillaria spp*) is the causal agent of the canker. No fruiting bodies were present, though the recent frosts would have destroyed any that were. The bark is not yet sufficiently degraded to enable inspection of the cambial/phloem area for fungal mycelium. Laboratory testing would be needed to confirm the presence of the fungus.

4.2 I viewed the trunk wound on the northeast side of the tree and concluded that although it is the result of a poorly made pruning wound it is not yet sufficiently decayed to reduce the structural integrity of the trunk in this area (see photograph 5 Appendix 1). This wound would have been made at a later date to those present in the upper crown.

4.3 I inspected the photographs taken by Rob Verney and concluded that these wounds were made during the execution of a heavy crown-reduction some years previously. Woundwood-development around the wound circumference is in all cases, extensive, and this indicates high vitality. However, the wound surface in all of the areas inspected has degraded and the resulting decay has progressed significantly into the scaffold branches (see photographs 6, 6a, 7, 7a, 8, 8a & 8b Appendix 1). This has greatly reduced the structural strength of the branches and their ability to support the re-grown crown which now exists. Due to this decay there is a risk of the re-grown branches breaking out.

4.4 It would be possible to retain the tree but a significant crown reduction would be required with repeated follow-up inspections and pruning works needed. If the bleeding canker is due to honey fungus then the tree will probably die.

5. Conclusions

5.1 I strongly suspect that the bleeding canker is a sign of honey fungus. The fungus is probably *Armillaria mellea* which is actively pathogenic and will kill the tree. The decayed pruning wounds have significantly reduced the structural integrity of the upper crown. These two factors lead me to conclude that removal of the tree and replacement with a suitable species would be the appropriate option in this instance.

6. Recommendations

6.1 Consider removal of the tree and replacement which will ensure continuity of tree cover and local landscape character. If confirmation of honey fungus infection is needed then a laboratory analysis will be required. This is a procedure that I think can still be undertaken by Forest Research at Alice Holt.

7. Assumptions and Limiting Conditions

7.1 Any legal description provided to the consultant/appraiser is assumed to be correct. Any titles and ownerships to any property are assumed to be good and marketable. No responsibility is assumed for matters legal in character. Any and all property is appraised or evaluated as though free and clear, under responsible ownership and competent management.

7.2 Care has been taken to obtain all information from reliable sources. All data has been verified insofar as possible, however, the consultant/appraiser can neither guarantee nor be responsible for the accuracy of information provided by others.

7.3 The consultant/appraiser shall not be required to give testimony or attend court by reason of this report unless subsequent contractual arrangements are made, including payment of an additional fee for such services as described in the fee schedule and contract of engagement.

7.4 Loss or alteration of any part of this report invalidates the entire report.

7.5 Possession of this report or a copy thereof does not imply right of publication or use for any purpose by any other than the person to who, it is addressed, without the prior expressed written or verbal consent of the consultant/appraiser.

7.6 Neither all nor any part of the contents of this report, nor copy thereof, shall be conveyed by anyone, including the client, to the public through advertising, public relations, news, sales or other media, without the prior expressed written or verbal consent of the consultant/appraiser particularly as to value conclusions, identity of the consultant/appraiser, or any reference to any professional society or institute or to any initialed designation conferred upon the consultant/appraiser as stated in his qualification.

7.7 This report and values expressed herein represent the opinion of the consultant/appraiser, and the consultant's/appraiser's fee is in no way contingent upon the reporting of a specified value, a stipulated result, the occurrence of a subsequent event, nor upon any finding to be reported.

7.8 Sketches, diagrams, graphs, and photographs in this report, being intended as visual aids, are not necessarily to scale and should not be construed as engineering or architectural reports or surveys.

7.9 Unless expressed otherwise, (1) information contained in this report covers only those items that were examined and reflects the condition of those items at the time of inspection; and (2) the inspection was by means of visual examination of accessible items.

7.10 There is no warranty or guarantee, expressed or implied, that problems or deficiencies of the plants or property in question may not arise in the future.

8. Certification of Performance

I, Shane A. Lanigan, certify that:

1. I have personally inspected the trees and the property referred to in this report and have stated my findings accurately. The extent of the evaluation or appraisal is stated in the attached report and the Terms of Assignment.
2. I have no current or prospective interest in the vegetation or the property that is the subject of this report and have no personal interest or bias with respect to the parties involved.
3. The analysis, opinions and conclusions stated herein are my own and are based on current scientific procedures and facts.
4. My analysis, opinions, and conclusions were developed and this report has been prepared according to commonly accepted arboricultural practices.
5. No one provided significant professional assistance to me, except as indicated within the report.
6. My compensation is not contingent upon the reporting of a predetermined conclusion that favours the cause of the client or any other party nor upon the results of the assessment, the attainment of stipulated results, or the occurrence of any subsequent events.

I further certify that I am a member in good standing of the American Society of Consulting Arborists, the Arboricultural Association, the Consulting Arborist Society, the International Society of Arboriculture and the Royal Forestry Society. I have worked full time in the field of Arboriculture for a period of forty four years.

Signed:

APPENDIX NO. 1 - PHOTOGRAPHS

PHOTOGRAPHS 1, 2, 3 & 4 - BLEEDING CANKER ON NORTHEAST SIDE OF STEM (GROUND LEVEL – APPROXIMATELY 2M)



Report of findings of visual inspection on birch tree at :
No. 17 Marlborough Place. London NW8 0PG

Date: 8th December 2016 - :

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**PHOTOGRAPHS 5 - OLD FLUSH-CUT PRUNING WOUND ON NORTHEAST SIDE AROUND 4M
ABOVE GROUND LEVEL**



Report of findings of visual inspection on birch tree at :

Date: 8th December 2016 -

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PHOTOGRAPHS 6, 6a, 7, & 7a - SHOWING OLD PRUNING WOUNDS



Report of findings of visual inspection on birch tree at:
No. 17 Marlborough Place London NW8 0PG

Date: 8th December 2016 -

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PHOTOGRAPHS 8, 8a & 8b - SHOWING DECAY





8a



8b

PHOTOGRAPHS 9 - OVERALL VIEW OF THE TREE TAKEN FROM LOUDON ROAD



Report of findings of visual inspection on birch tree at :
No. 17 Marlborough Place, London NW8 0PG

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APPENDIX 2

Qualifications: I hold the City and Guilds Certificate in Tree Surgery and am an International Society of Arboriculture Certified Arborist, also holding the International Society of Arboriculture Municipal Arborist Accreditation and being a Board Certified Master Arborist of that professional body.

In addition, I hold the Royal Forestry Society's Professional Diploma in Arboriculture which is a degree level qualification rated as level 6 on the qualifications and curriculum framework. It is a qualification specific to the arboricultural profession. In matters of tree safety and risk assessment I have undertaken and completed the Lantra Awards Professional Tree Inspection Course and integrated assessment.

I am a registered consultant of the American Society of Consulting Arborists (ASCA RCA#588).

I am a professional member of:

- The American Society of Consulting Arborists
- The Arboricultural Association
- The Consulting Arborist Society
- The International Society of Arboriculture
- The Royal Forestry Society

Career details: I am a second generation arborist having worked from 1971 to 1979 for a private tree care company before forming my own arboricultural company in 1979. Using my practical experience and continuing education I attained Arboricultural Association Approved Contractor status in 1989 and subsequently I.S.O. accreditations 9001 (Quality Assurance), 14001 (Environmental) and 18001 (Health & Safety).

Continuing professional development: I maintain and improve my professional knowledge by being an active member of the five professional bodies referred to above. In addition I attend a high number of arboriculture related seminars and the annual conferences of the International Society of Arboriculture, the Arboricultural Association and the Institute of Chartered Foresters (ICF). I am also privileged to serve on the credentialing council of the International Society of Arboriculture educational certification department.

My present profession involves daily administration and hands on supervisory duties of Urban Forestry, and the preparation of tree safety/hazard evaluation surveys. Pre-purchase arboricultural reports form an increasing sector of my work and I am involved in providing professional advice to private persons and corporate bodies on a daily basis.

Appendix B

Hollingsworth, Daniel: WCC

From:
Sent: 03 August 2017 10:15
To:
Subject: Fwd: Birch enquiry - 17 Marlborough Place

Hi Tom

I have now been forwarded the e-mail regarding the Birch at Marlborough Place (see below). I will call you to discuss.

If you should require any further information please contact me.

Regards

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Begin forwarded message:

From:
Date: 27 July 2017 at 04:58:31 GMT-4
To:
Subject: Birch enquiry

P

Our Ref:

27 July 2017

TREE HEALTH DIAGNOSTIC & ADVISORY SERVICE

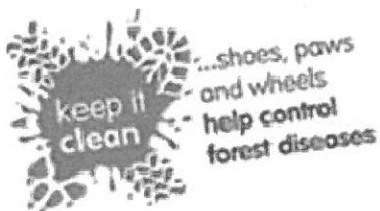
Dear

We have now completed the identification of the *Phytophthora* species affecting the silver birch in Marlborough Place. It has come back as *Phytophthora pseudosyringae*. This species of *Phytophthora* is considered endemic and there are no quarantine measures in place for it. *P. pseudosyringae* is recorded as causing cankers on birch, as well as a range of root rot, bark and stem lesions on other broadleaved species. It has been found to be extremely damaging to *Nothofagus*. In order to minimise the risk of the disease spreading to other trees in the vicinity, I would suggest that material from the infected tree is removed from site and preferably burned.

To help us deal with your enquiry, please always quote our enquiry reference number which is _____ and your client number which is _____

Yours sincerely,

Tel: 01438 744444



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Appendix C



Director of Planning

Please reply to: Tom Howgego (Tree Section)

Direct Line/Voicemail:
Email:

Your Ref:
My Ref: TPO 639

Date: 4th September 2017

Dear Mr Clarke,

Tree Preservation Order (TPO) Westminster no. 639 (2017): 15-17 The Close, Marlborough Place, London, NW8 0PG

Thank you for your letter of 28th April 2017 and your email correspondence dated 3rd August 2017.

Objection summary

You object to the TPO on the grounds that the Silver Birch tree T1 is of poor condition, the tree has a limited safe life expectancy, and that there was a lack of assessment of the amenity value of the tree.

Response to objection

In summary it is considered that the tree is of significant amenity value, is an appropriate size and species for the location, and makes a positive contribution to the character and appearance of the St John's Wood Conservation Area. It is not considered that the current condition of the tree warrants its removal.

Amenity value.

National Planning Practice Guidance sets out the TPOs should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.

In my amenity assessment I conclude that the tree is of public amenity value. The assessment is set out in more detail below according to the structure advised in national Planning Practice Guidance.



Visibility, size and form

The birch tree is approximately 12 m in height, located in the garden of the property adjacent to Loudoun Road. It is a mature tree. The tree is clearly visible from public locations on Marlborough Place and Loudoun Road.

By virtue of its size and location, the tree makes a useful contribution to the visual amenity of the area and is clearly visible from nearby properties.

The birch tree has been heavily crown reduced previously but has regrown to form a natural, rounded crown shape. This tree surgery has not had a detrimental effect on the form of the tree.

Future potential as an amenity

The tree is a mature specimen. It appears to be in reasonable condition for its age. The condition of the tree is integral to the future potential of the tree, and I comment on this below.

Rarity, cultural or historic value

Birch is a relatively common species in Westminster, and appears well suited to the urban environment. The tree is not known to have a specific cultural or historic value.

Contribution to, and relationship with, the landscape

The garden of the property is L shaped with a large portion of the garden facing Loudoun Road. The tree is located within this portion of the garden approximately 6-7m from the frontage of the property. The tree is highly visible from Loudoun Road and Marlborough Place. The scale and form of the tree are such that it is in proportion with the dimensions of the garden. It adds maturity to the townscape and helps provide some privacy and screening between the property and the road.

The tree is considered to make a positive contribution to the townscape and to be suitable in its location.

Contribution to the character and appearance of a conservation area

The tree is visible from publicly accessible locations and makes a positive contribution to the greening of the townscape. St John's Wood conservation area audit makes special reference to the importance of the contribution made by privately owned trees to the character of the Conservation Area.

Trees within front gardens in St John's Wood are an important heritage asset and the loss of this tree would be detrimental to the character and appearance of the conservation area.

Other factors

Trees contribute generally to mitigation of climate change, by absorbing and storing carbon dioxide. They help to filter harmful airborne pollutants. Birch has been shown to be species of high value to a range of invertebrates. Invertebrates, in turn, form a potential food source for birds. The tree may also provide cover and shelter and potential roosts for birds.

Tree condition

I note your objection to the TPO on the grounds of tree condition. Your letter of objection set out that the bleeding cankers on the main stem of the tree suggest it is affected by honey fungus, but subsequent testing of bark samples has found the likely cause of bleeding canker is an organism called *Phytophthora pseudosyringae*. This species of Phytophthora was identified in the UK only a decade ago, and, there is not a great deal of literature that I have been able to



find on the prognosis for affected trees. However JKI Data sheets Plant Diseases and Diagnosis (2013) set out that *Phytophthora pseudosyringae* has been reported as causing bleeding canker symptoms on birch trees and states:

'Disease development is very fast in seedlings, but with mature trees it can be very slow and can continue over years. *Phytophthora* species may kill the birch trees but not always. Outcome of an infection depends on the general health determined by climate, nutrient availability, competition etc. Sometimes trees can survive and even recover from the *Phytophthora* attack, but mostly secondary pathogens attack the weakened trees and destroy them'

As such whilst the tree is affected by a disease which may result in its premature death, I am not convinced that its condition of the tree merits its removal at present and measures such as soil improvement, aeration and mulching could be implemented to improve the growing conditions and longevity of the tree.

With regards to the pruning wounds that you refer to in the upper crown of the tree, I note that you advise that they are showing signs of decay, although the wounds were not probed further to assess the extent of the decay. The risk of limb failure due to the presence of these wounds could be reduced through appropriate pruning. Crown reduction would help to decrease wind loading on the affected limbs.

If the content of this letter is sufficient to allow you to withdraw all or part of your objections to the Order, please let me know. If I do not hear from you within 21 days of the date of this letter, I will assume that you would like your objections to the order to remain.

In this case, this matter will be reported to a Planning Applications Committee, where Councillors will decide whether or not to confirm the Tree Preservation Order. At present the intended date of the Committee is 26th September 2017, although if this is altered I will ask my colleagues in the Legal section to let you know.

Yours sincerely

Arboricultural Officer

TREE PRESERVATION ORDER
TOWN AND COUNTRY PLANNING ACT 1990
CITY OF WESTMINSTER TREE PRESERVATION ORDER 636 (2017)

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 636 (2017)

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

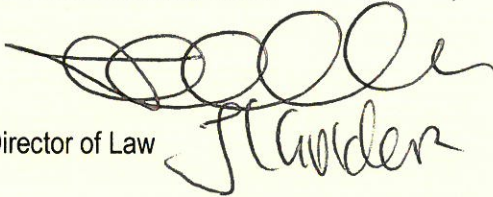
3. (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.
(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions 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.

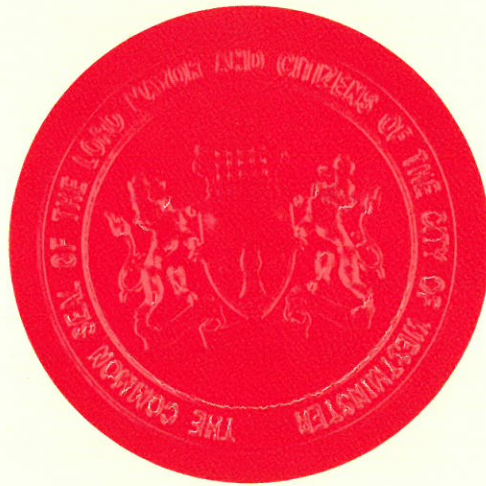
Application to trees to be planted pursuant to a condition

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 *12th* day of *April* 2017

THE COMMON SEAL OF THE LORD) 57662
MAYOR AND CITIZENS OF THE)
CITY OF WESTMINSTER was)
hereunto affixed by order:)


Director of Law
PRINCIPAL SOLICITOR



SCHEDULE
SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
T1	Silver birch	The Close 15-17 Marlborough Place London NW8 0PG

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

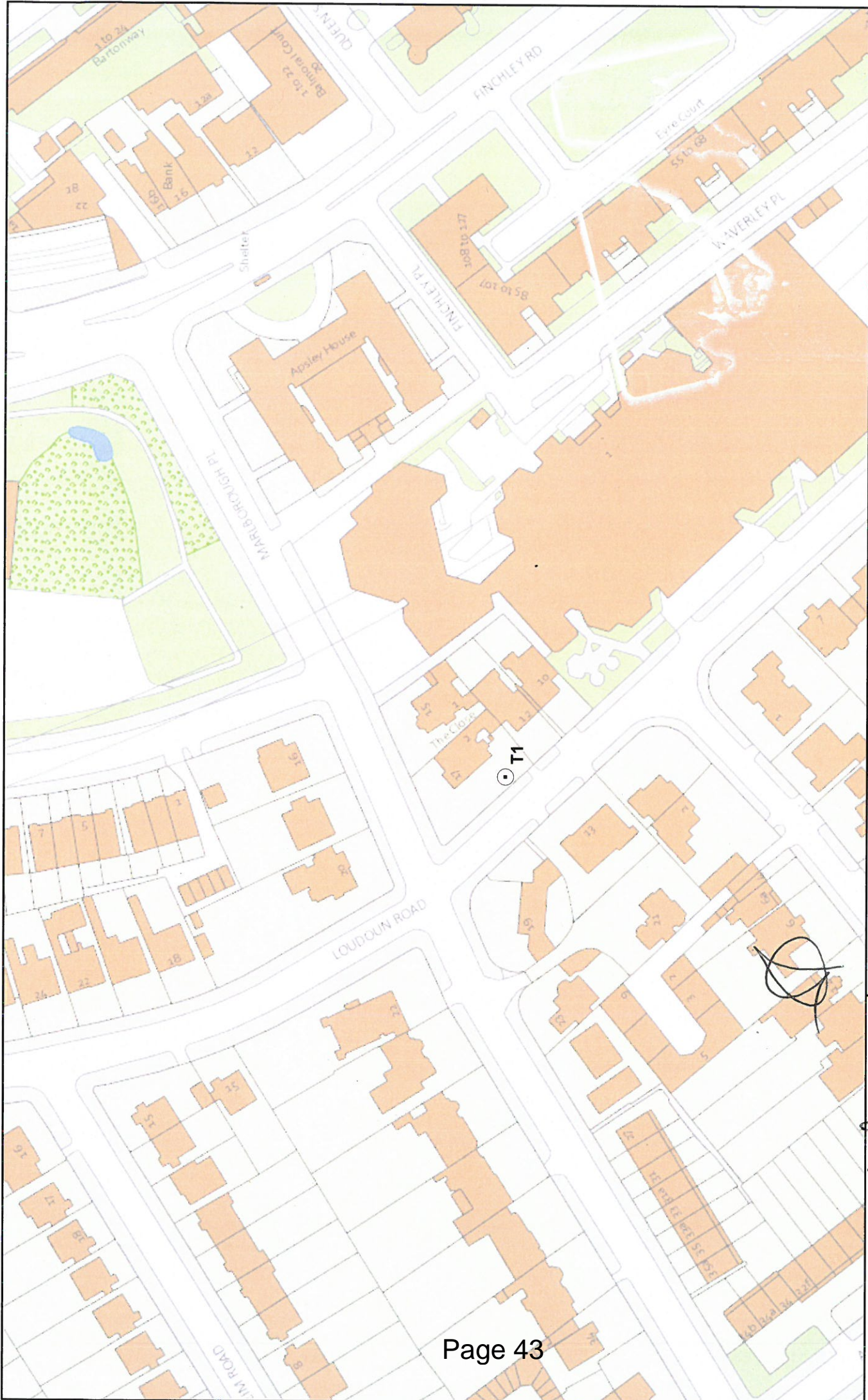
<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>

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

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>

Woodlands
(within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>



Scale 1:1,250
 0 5 10 20 Metres



City of Westminster
 Corporate GIS Team

Map produced by Corporate GIS Team
 Date: April 2017 Map Reference: 0217

Tree Preservation Order Westminster no. 636 (2017)
 The Close, 15-17 Marlborough Place, London, NW8 0PG

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Director of Law: *[Signature]*
 Signed: **PRINCIPAL SOLICITOR**

DATED *12th April* 2017

THE TOWN AND COUNTRY PLANNING
ACT 1990 (AS AMENDED)

CITY OF WESTMINSTER

TREE PRESERVATION ORDER 636 (2017)

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