

## 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

28<sup>th</sup> 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 26<sup>th</sup> 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:

8<sup>th</sup> 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 2<sup>ND</sup> 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.

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

Date: 8<sup>th</sup> December 2016 - ..

- 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 2<sup>nd</sup> 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: 8<sup>th</sup> December 2016 - :

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

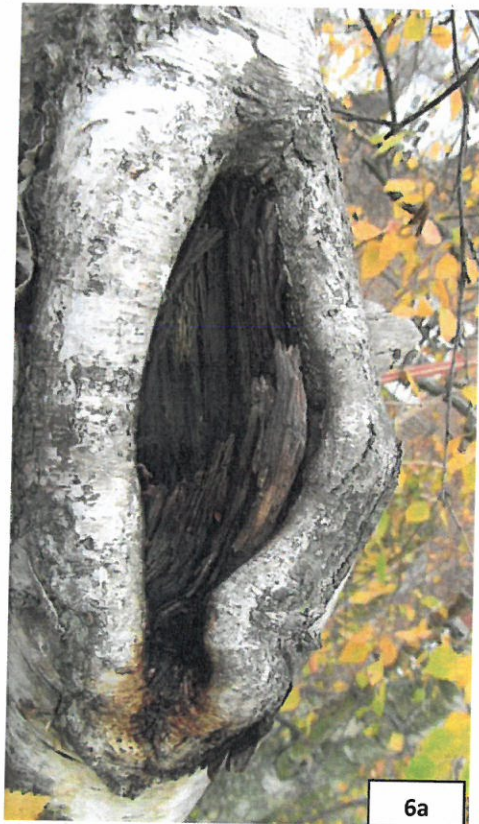


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Report of findings of visual inspection on birch tree at :

Date: 8<sup>th</sup> December 2016 -

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





**PHOTOGRAPHS 8, 8a & 8b - SHOWING DECAY**







8a



8b

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



## 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**

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**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

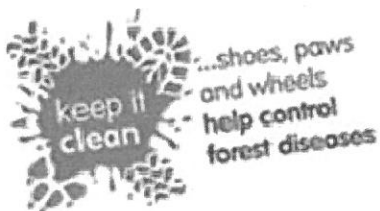
We have now completed the identification of the *Phytophthora* species affecting the silver birch in Marlborough Place. It has come back as *Phytophthora pseudosyringae*. This species of *Phytophthora* is considered endemic and there are no quarantine measures in place for it. *P. pseudosyringae* is 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: 4<sup>th</sup> 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 28<sup>th</sup> April 2017 and your email correspondence dated 3<sup>rd</sup> 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



## City of Westminster

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 26<sup>th</sup> September 2017, although if this is altered I will ask my colleagues in the Legal section to let you know.

Yours sincerely

Arboricultural Officer

