



City of Westminster

Executive Summary and Recommendations

Title of Report: Tree Preservation Order No. 645 (2018) 51
Clifton Hill London NW8 8QE

Date: 8th January 2019



Summary of this Report

The City Council has made a Tree Preservation Order (TPO) to protect one silver birch tree (T1) located in the front garden of 51 Clifton Hill, London NW8 8QE. The TPO is provisionally effective for a period of six months from 16th August 2018 during which time it may be confirmed with or without modification. If not confirmed, the TPO will lapse after 15th February 2018.

The TPO was made because the tree makes a valuable contribution to public amenity and to the character and appearance of the St John's Wood conservation area. The City Council, having been made aware of the proposal to remove the birch tree considers it expedient in the interests of the amenity that a TPO is made, in order to safeguard its preservation and future management.

Three objections to the TPO were received¹.

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. 645 (2018); OR

(b) Confirm Tree Preservation Order No. 645 (2018) with or without modification with permanent effect.

¹ Names and addresses of the Objectors have been removed from this report.



City of Westminster

Committee Report

| | |
|--------------------|--|
| Item No: | |
| Date: | 8 th January 2019 |
| Classification: | General Release |
| Title of Report: | Tree Preservation Order No. 645 (2018) 51 Clifton Hill London NW8 0QE |
| Report of: | The Director of Law |
| Wards involved: | Abbey Road |
| Policy context: | |
| Financial summary: | No financial issues are raised in this report. |
| Report Author: | Ashley Darkwah |
| Contact details | adarkwah@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 645 (2018), authorised by the Director of Planning acting under delegated powers on 14th August 2018, was served on all the parties whom the Council is statutorily required to notify and took effect on 16th August 2018.
- 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 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 645 (2018) was made following the receipt by the City Council of six weeks notice of intention to remove the Silver Birch Tree (T1) submitted under section 211 of the Town and Country Planning Act 1990 (Trees in Conservation Areas). 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 tree is located in the front garden of 51 Clifton Hill. It is clearly visible along a considerable length of Clifton Hill and from Abbey Road.
- 1.5 The reasons given for the proposed removal of the tree were:
 - Damage to the front boundary wall at 51 Clifton Hill and to plant a fruit tree as a replacement.
- 1.6 Subsequent to making the TPO the City Council received three objections.

2. Objection 1

- 2.1 On 18th August 2018 the Council's Development Planning Section received a letter from Objector 1, objecting to the TPO on the grounds that:

- The Silver Birch Tree is huge for a front garden
- The roots are cracking the wall and paving stones making the street look messy and unkempt
- The tree blocks all light
- The tree drops seeds and leaves into the garden

3. Response to Objection 1

3.1 The City Council's Arboricultural Officer responded to the objection by letter dated 10th September 2018. The Officer considered that the damage to the front boundary wall and paving can be repaired without removal, and the amenity value of the tree outweighs the reasons given in support of removal of the tree.

3.2 The Silver Birch Tree is a large specimen however it is not unusual to find trees of a similar size in front Gardens in Westminster. The size and form of the tree is well suited to the location. Records show that the tree has not been pruned since 1996, some moderate pruning would help maintain the oval crown shape.

3.3 The Council's head of building control has commented that:

- The damage to the front wall is minor and the wall appears to be no more than 400mm high
- There is limited damage to the footway
- The damage is clearly from contact with the tree
- The wall could easily bridge the tree with the use of lintels or railings
- The footway and the wall could easily be repaired without removing the tree

3.4 The Silver Birch tree is not considered to be a tree that causes excessive shade, dappled light can pass through the canopy. It is agreed that the tree causes some shading of western light to the front of 49 Clifton Hill, however this is not considered to be a significant problem and can be easily managed by pruning.

3.5 The leaves of silver birch trees are small, leaf drop is not considered an excessive problem. The seeds of silver birch trees can be abundant and widely dispersed, this is recognised as inconvenient. However, clearing fallen leaves and seeds is a normal part of garden maintenance.

3.6 The Silver Birch has high amenity value and makes a positive contribution to the Conservation area. On balance, its removal is not considered to be justified on the grounds of damage to the wall, its shading effect, its size or the debris it creates.

4. Objection 2

4.1 On 18th August 2018 the Council's Development Planning Section received a letter from Objector 2, objecting to the TPO on the grounds that:

- The Silver Birch tree is cracking the wall and surrounding gate posts
- The tree will become too large to remain stable

5. Response to Objection 2

5.1 The City Council's Arboricultural Officer responded to the objection by letter dated 10th September 2018.

5.2 The Officer considered that the tree is a large specimen but appears to be in good condition with no signs of structural defects.

5.3 Silver birch trees usually reach heights of between 12-17m in maturity. The height of the tree at 51 Clifton Hill is not a reason to consider it at risk of failure. The tree is already a mature specimen and its future growth rate will be slow. On inspection there were no signs of decay or fungal fruiting bodies or any dieback in the crown that would indicate that the tree was in poor condition.

5.4 The Council's Head of Building Control has commented that:

- The damage to the front wall is quite minor and the wall appears to be no more than 400mm high.
- There appears to be limited deformation of the footway.
- The damage is clearly from contact with the tree.
- The wall could quite easily bridge the tree with the use of lintels or railings.
- The wall and posts could be repaired without the removal of the tree.

5.5 The Tree Preservation Order does not preclude the removal of the tree in the future, if its condition declines. The tree has high amenity value and makes a

positive contribution to the conservation area. On balance, removal is not considered to be justified on the grounds of the damage to the wall or the height of the tree.

6. Objection 3

6.1 On 14th September 2018 the Council's Development Planning Section received a letter from Objector 3, objecting to the TPO on the grounds that:

- The Silver Birch tree is causing damage to the boundary wall at 51 Clifton Hill, a grade II listed structure
- The damage cannot be addressed without substantial works to the front boundary

7. Response to Objection 3

7.1 The City Council's Arboricultural Officer responded to the objection by letter dated 1st October 2018.

7.2 The officer considered that although the tree is causing damage to the boundary wall, it would be possible to repair the wall, and retain the tree.

7.3 The Council's Head of Building Control has commented that the damage to the wall is quite minor and that the wall could easily bridge the tree with the use of lintels or railings.

7.4 If the modifications to the wall are considered to cause harm to the listed structure, the impact of this harm would be weighed against the loss of the Silver Birch Tree. Any application received by the City Council that required the impacts of harm to these heritage assets to be weighed against each other, would be determined in accordance with the National Planning Policy Framework.

7.5 On balance and in view of the amenity value of the silver birch tree, further exploration of the options for repair to allow the retention of the tree is required.

7.6 The making of the Tree Preservation Order does not preclude appropriate management of the tree in the future.

8. Ward Member Consultation

- 8.1 Ward member comments were sought in this matter and a response has not been received.

9. Conclusion

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

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT ASHLEY DARKWAH, PLANNING AND PROPERTY SECTION, LEGAL SERVICES ON 020 7641 5431 (Email adarkwah@westminster.gov.uk)

Local Government (Access to Information) Act 1985

Appendix 1 - Copy of TPO 645 (2018)

Appendix 2 - Photographs of T1

Background Papers

1. Objection letter 1 dated 18th August 2018
2. Response letter from City Councils Arboricultural officer dated 10th September 2018
3. Objection letter 2 dated 18th August 2018
4. Response letter from City Councils Arboricultural officer dated 10th September 2018
5. Objection Letter 3 dated 14th September 2018
6. Response letter from City Councils Arboricultural officer dated 1st October 2018

TREE PRESERVATION ORDER
TOWN AND COUNTRY PLANNING ACT 1990
CITY OF WESTMINSTER TREE PRESERVATION ORDER 645 (2018)

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 645 (2018)

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 16th day of August 2018

THE COMMON SEAL OF THE LORD)
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 | 51 Clifton Hill London NW8 0QE |
| | | |

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

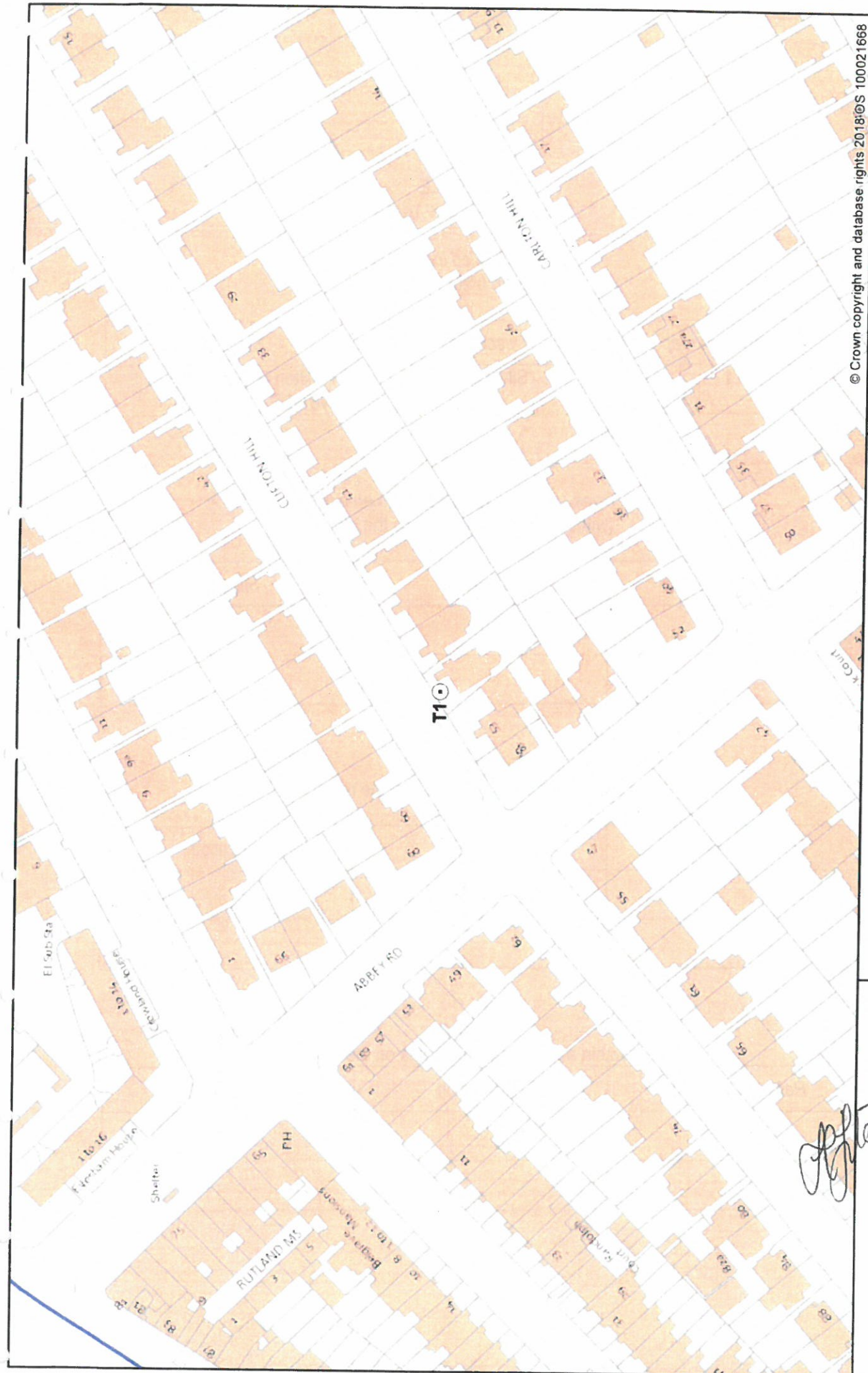
| <i>Reference on map</i> | <i>Description</i> | <i>Situation</i> |
|-------------------------|--------------------|------------------|
| none | | |
| | | |

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

| <i>Reference on map</i> | <i>Description</i> | <i>Situation</i> |
|-------------------------|--------------------|------------------|
| none | | |
| | | |

Woodlands
(within a continuous black line on the map)

| <i>Reference on map</i> | <i>Description</i> | <i>Situation</i> |
|-------------------------|--------------------|------------------|
| none | | |
| | | |



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Scale 1:1,250
0 5 10 20 Metres

Map produced by Corporate GIS Team
Date: August 2018 Map Reference: 0379


City of Westminster

Corporate GIS Team

Tree Preservation Order Westminster No. 645
51 Clifton Hill
London
NW8 0QE

[Handwritten signature]

PRINCIPAL SOLICITOR

Director of Law:

Signed:

DATED 16th August

2018

THE TOWN AND COUNTRY PLANNING
ACT 1990 (AS AMENDED)

CITY OF WESTMINSTER

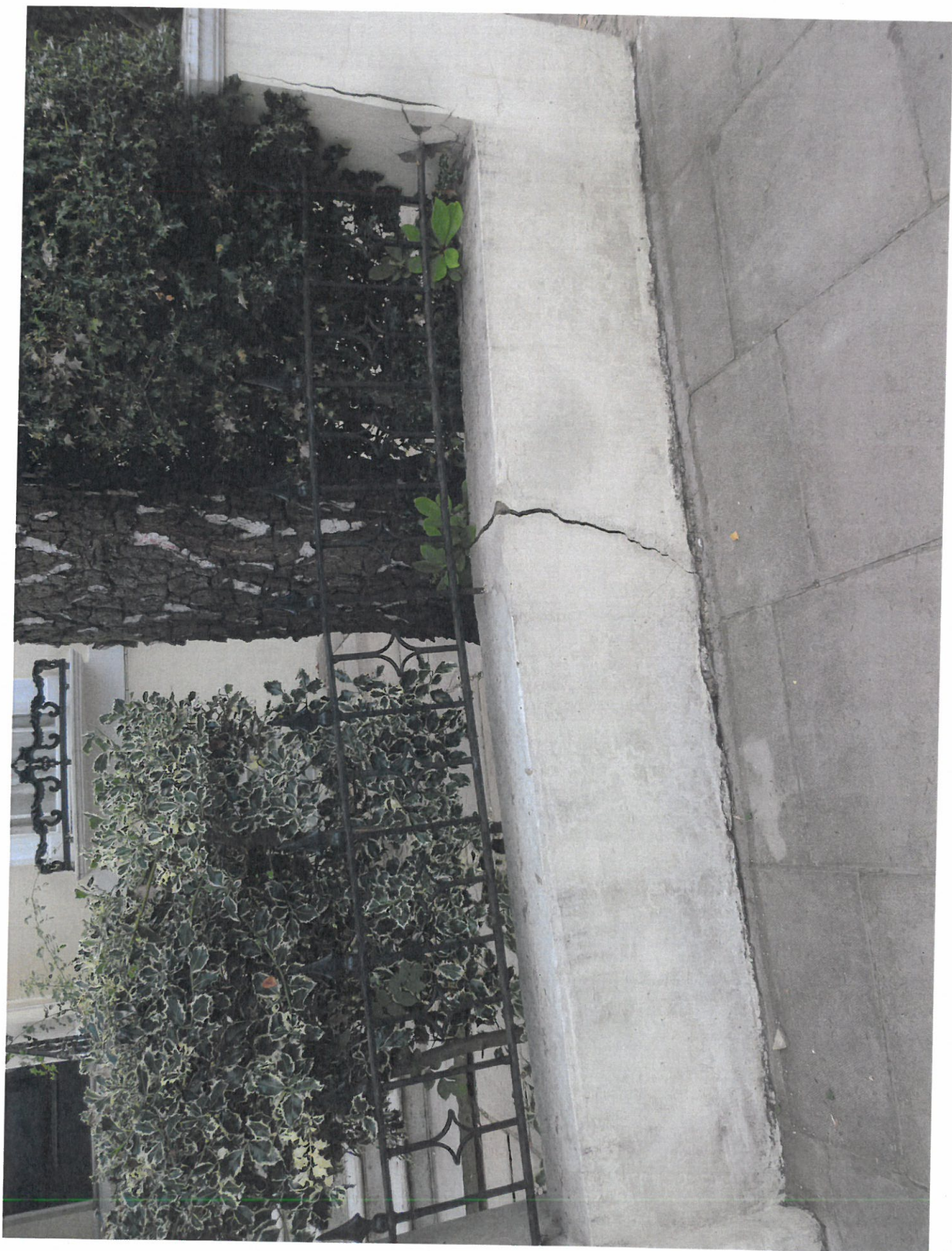
TREE PRESERVATION ORDER 645 (2018)

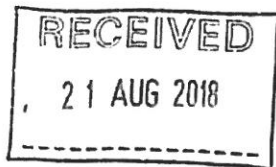
TREE PRESERVATION ORDER
MADE FOR THE PURPOSES
OF SECTION 198 OF THE
TOWN AND COUNTRY
PLANNING ACT 1990
(AS AMENDED)

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









18th August 2018.

To The Director of Law,

We were very disappointed to hear that the tree in the garden would not be coming down after all. The Silver Birch is number 51 so so high for a front garden, the roots are cracking the wall, paving stones in the front making the street look messy and unkempt. The tree affects us by taking all our light and I am constantly sweeping seeds and tiny leaves from my garden [redacted], which come in to my house everyday through the windows and stepped into the house. I can't see why it can't come down and a replacement tree planted in its place.

Regards



John Walker
Director of Planning

Please reply to: Rosie Dobson (Tree Section)
Direct Line/Voicemail: 020 7641 7761
Email: rdobson@westminster.gov.uk

Your Ref:
My Ref: TPO 645

Date: 10 September 2018

Tree Preservation Order (TPO) Westminster no. 645 (2018)
51 Clifton Hill, London NW8 0QE

Thank you for your letter of 18th August 2018.

I note your objections to the TPO on the grounds that the silver birch tree is huge for a front garden, that the tree is cracking the wall and the paving stones making the street look messy and unkempt, that it blocks all your light and that it drops seeds and leaves into your garden.

In summary it is considered that the damage to the front boundary wall and paving can be repaired without tree removal and that the amenity value of the tree outweighs the reasons given in support of tree removal.

Size of the tree

It is true that the silver birch is a large specimen. However, it is not unusual to find trees of a similar size in similar sized front gardens in Westminster, including other gardens on Clifton Hill. The tree has an upright, oval form which is well suited to the location. Our records indicate that the it has not been pruned since 1996. Some modest pruning of lateral branches would help maintain the oval crown shape. I do not consider that it is overly dominant or inappropriate for the site.

Damage to wall and paving

You state that the tree is cracking the wall and paving stones making the street look messy and unkempt.

The Council's Head of Building Control has commented that:

- The damage to the front wall is quite minor and the wall appears to be no more than 400mm high. There appears to be limited deformation of the footway.
- The damage is clearly from contact with the tree.
- The wall could quite easily bridge the tree with the use of lintels or railings.

The footway and the wall could be repaired without the removal of the tree.

Blocking light

As a species silver birch has an upright form, with a light and open crown. In comparison to other broadleaved trees, it is not considered to be a tree that causes excessive shade, as dappled light can pass through the canopy.

The silver birch is located to the west of your north-west facing property. Although I agree that the tree does cause some shading of western light to the front of your property, this is not considered to be a significant problem and can be easily managed by sympathetic pruning.

Seed and leaf drop into your garden

The leaves of silver birch trees are relatively small and their leaf drop is not normally considered to be an excessive problem. The small seeds of silver birch trees can be abundant and widely dispersed. This is recognised as inconvenient. However, clearing fallen leaves and seeds is a normal part of regular garden maintenance.

Appraisal

The silver birch tree at 51 Clifton Hill is a mature tree in a prominent location. The size of the tree in relation to the garden and the property is not unusual in Westminster and is not considered to be inappropriate.

The front wall of the property has signs of cracking, caused by the tree. However, the wall could bridge the tree with the use of lintels or railings. The deformation of the footway is limited and could be easily repaired if considered necessary by the Council's Highways Department.

The tree does cause some shading, but its shading effect on your property is limited. Modest pruning would reduce the shading effect. Whilst I acknowledge that the leaf and seed drop into your garden is inconvenient, the problem is not considered to be of such severity as to merit the removal of the tree.

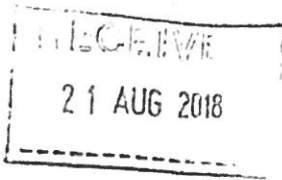
The silver birch has high amenity value and makes a positive contribution to the conservation area. On balance, its removal is not considered to be justified on the grounds of the damage to the wall, its shading effect, its size or the debris it creates.

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. My colleagues in the Legal section will contact you in due course to confirm the Committee date.

Yours sincerely

Rosie Dobson
Arboricultural Officer



four

18.8.18

Ref: AD/30113205

Re: 51 Clifton Hill NW8 0QE
Tree preservation order 645
Silver birch

Dear Ashley Darkwah,

I was very surprised and disappointed to receive the formal notice (dated 16th Aug 2018) to say a tree preservation order has been placed on the silver birch tree at 51 Clifton Hill NW8 especially when a previous notice had been posted to me saying planning had arranged for it to be cut.

51 Clifton Hill,
I look out on to this huge tree, grown to the height of the house. I see a shabby cracked wall which does nothing to match a 'valuable contribution' to the character and appearance of this area. The tree is cracking the wall and surrounding gate posts. And I fear the tree will become too large to remain stable.

I want this tree to be felled and will support all efforts to see this is done. I hope so, in the near future. Yours faithfully

John Walker
Director of Planning

Please reply to: Rosie Dobson (Tree Section)
Direct Line/Voicemail: 020 7641 7761
Email: rdobson@westminster.gov.uk

Your Ref:
My Ref: TPO 645

Date: 10 September 2018

Tree Preservation Order (TPO) Westminster no. 645 (2018)
51 Clifton Hill, London NW8 0QE

Thank you for your letter of 18th August 2018.

I note your objections to the TPO on the grounds that the silver birch is cracking the wall and surrounding gate posts and that the tree will become too large to remain stable.

Damage to wall and gate posts

You state that the silver birch is cracking the wall and gate posts.

The Council's Head of Building Control has commented that:

- The damage to the front wall is quite minor and the wall appears to be no more than 400mm high. There appears to be limited deformation of the footway.
- The damage is clearly from contact with the tree.
- The wall could quite easily bridge the tree with the use of lintels or railings.

The wall and posts could be repaired without the removal of the tree.

Risk of Tree Failure

You are concerned that the tree will become too large to remain stable and you make reference to the size of the tree as being the height of the house.

Silver birch trees usually reach heights of between 12-17m in maturity. The height of the tree at 51 Clifton Hill is not a reason to consider it at risk of failure. Furthermore, the tree is already a mature specimen and its future growth rate will be slow.

When I inspected the tree I did not note any signs of decay or fungal fruiting bodies or any dieback in the crown that would indicate that the tree was in poor condition. The size and the condition of the tree were not given by the applicant as reasons for tree removal.

The TPO does not preclude the possibility of the silver birch being removed if at a later date this was found to be necessary due to its condition.



Appraisal

The silver birch tree at 51 Clifton Hill is a mature tree in a prominent location. It appears to be in good condition with no visible signs of decay.

The front wall of the property has signs of cracking, caused by the tree. However, the wall could bridge the tree with the use of lintels or railings.

The tree is a large specimen but it appears to be in good condition with no signs of structural defects. The height of the tree alone is not a reason to consider it at risk of failure. The making of the Tree Preservation Order does not preclude the removal of the tree in the future, if its condition declines.

The tree has high amenity value and makes a positive contribution to the conservation area. On balance, its removal is not considered to be justified on the grounds of the damage to the wall or the height of the tree.

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. My colleagues in the Legal section will contact you in due course to confirm the Committee date.

Yours sincerely

Rosie Dobson
Arboricultural Officer

Director of Law
Ref: AD30113205
Legal Services
Ground Floor (G29)
Kensington Town Hall
Hornton Street
London
W8 7NX

Objection to Tree Preservation Order 645 (2018)

We write to raise our objection to the Tree Preservation Order 645 which came into force on the 16th August 2018.

We object to the order because the tree in question is causing significant damage to the existing boundary wall of the property at 51 Clifton Hill, a grade II listed structure. The wall is shown in the documentation submitted with the planning application for the tree's removal, ref no.18/05884/TCA.

The damage to the wall is severe and cannot be addressed without substantial works to the front boundary of the property.

Kind Regards,



John Walker
Director of Planning

Please reply to: Rosie Dobson (Tree Section)
Direct Line/Voicemail: 020 7641 7761
Email: rdobson@westminster.gov.uk

Your Ref:
My Ref: TPO 645

Date: 01 October 2018

Tree Preservation Order (TPO) Westminster no. 645 (2018)
51 Clifton Hill, London NW8 0QE

Thank you for your letter received by the City Council on 14th September 2018.

I note your objection to the TPO on the grounds that the silver birch is causing damage to the boundary wall of 51 Clifton Hill, a grade II listed structure, and that the damage cannot be addressed without substantial works to the front boundary.

In summary it is considered that the silver birch tree has significant amenity value and makes a positive contribution to the character and appearance of the conservation area. Although the tree is causing damage to the boundary wall, it would be possible to repair the wall, albeit in a modified form, and retain the tree.

In your letter of objection you state that the tree is causing significant/severe damage to the wall, which cannot be addressed without substantial works to the front boundary. The Council's Head of Building Control has commented that the damage to the wall is quite minor and that the wall could easily bridge the tree with the use of lintels or railings. There are many instances throughout Westminster where walls are rebuilt leaving gaps which are bridged with railings or using lintels to bridge buttress roots, and these modifications are normally considered acceptable.

You note that 51 Clifton Hill is a grade II listed structure. If the modifications to the wall are considered to cause harm to the listed structure then the impact of this harm would be weighed against the loss of the birch tree. Any application received by the City Council that required the impacts of harm to these heritage assets to be weighed against each other would be determined in accordance with the National Planning Policy Framework.

On balance and in view of the amenity value of the silver birch tree, further exploration of the options for repair and/or rebuilding of the wall to allow the retention of the tree is required. The making of the Tree Preservation Order does not preclude appropriate management of the tree in the future.



City of Westminster

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. My colleagues in the Legal section will contact you in due course to confirm the Committee date.

Yours sincerely

Rosie Dobson
Arboricultural Officer

