

Executive Summary and Recommendations

Title of Report: Tree Preservation Order No. 649 – 57
Hamilton Terrace, NW8 9RG

Date: 17th September 2019



Summary of this Report

On 30th April 2019 the City Council made a provisional Tree Preservation Order (TPO) to protect one red maple tree (labelled T1 on the TPO plan) located in the back garden of 57 Hamilton Terrance, London, NW8 9RG. The TPO is provisionally effective for a period of six months from the date it was made (30th April 2019) during which time it may be confirmed with or without modification. If not confirmed, the TPO will lapse after 30th October 2019.

The TPO was made because the tree has high amenity value and makes a positive contribution to the character and appearance of the conservation area (St John's Wood). The City Council, having been made aware of the proposal; to remove the red maple tree, considered it expedient in the interests of amenity that a TPO was made, in order to safeguard its preservation and future management.

Confirmation of the TPO will not preclude the appropriate management or removal of the tree in the future, subject to the merits of a future application.

Objection to the TPO has been received from:-

- MWA Arboriculture Ltd, Bloxham Mill Business Centre, Barford Road, Bloxham, Banbury, OX5 4FF

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

Recommendations

The Sub-Committee should decide EITHER

(a) NOT TO CONFIRM Tree Preservation Order No. 649 (2019); OR

(b) TO CONFIRM Tree Preservation Order No. 649 (2019) with or without modification with permanent effect.



City of Westminster

Committee Report

Item No:	
Date:	17 th September 2019
Classification:	General Release
Title of Report:	Tree Preservation Order No. 649 (2019) 57 Hamilton Terrace, London, NW8 9RG
Report of:	57 Hamilton Terrace
Wards involved:	Regent's Park
Policy context:	No requirement to have regard to Development Plan policies when confirming a TPO but special attention must be paid to desirability of preserving enhancing the character and appearance of the conservation area Notwithstanding the above – the following planning policies are of relevance: S25, S38, S31 - Westminster City Plan (Nov 2016) DES 9; ENV16 - UDP
Financial summary:	No financial issues are raised in this report.
Report Author:	Christopher Todman
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1. **Background**

- 1.1 Under the Town and Country Planning Act 1990 (the “1990 Act”) and the Town and Country Planning (Tree Preservation) (England) Regulations 2012 (the “2012 Regulations”) the City Council has the power to make and to confirm Tree Preservation Orders within the City of Westminster. Tree Preservation Order 649 (2019) authorised under delegated powers was served on all the parties whom the Council is statutorily required to notify and took effect on 30th April 2019.
- 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 649 (2019) was made following the receipt by the City Council of six weeks’ notice of intention to remove the red maple tree (shown labelled T1 of the TPO Plan). Under 211 of the 1990 Act it is defence to the offence of removing a tree in a conservation area if the person undertaking the works has provided 6 weeks’ notice to the local planning authority in advance of doing so. The service of such a notice effectively leaves the City Council in a position where it must either accept the notice and allow for the tree to be removed or to take further protective action by making a TPO.
- 1.4 The tree is located in the rear garden of 57 Hamilton Terrace. It is clearly visible from Hall Road to the north east. It can also be seen from the rear of various properties on Hamilton Terrace and Maida Vale. The tree is in good form and is approximately 12m high.
- 1.5 The tree was considered by the Council’s Tree Section to have high amenity value and to make a positive contribution to the character and appearance of the conservation area (full details for this conclusion are set out in the Officer’s report within the background papers).
- 1.6 The initial reasons given by the Applicant for the proposed removal of the tree were:

- Alleged induced clay shrinkage subsidence to the property at 55 Hamilton Terrace
- 1.7 No technical evidence was submitted with the application to support this assertion.
- 1.8 The Council's Tree Section were of the view that the lack of technical evidence provided did not support the subsidence conclusion, and that the evidence provided was insufficient to allow for the Council's Building Control Surveyor to assess the position.
- 1.9 A future TPO application to remove the tree on the grounds of alleged subsidence damage will require the following supporting information: A report by an engineer or surveyor, to include a description of damage, vegetation, monitoring data, soil, roots and repair proposals. Also a report from an arboriculturist to support the tree work proposals. These requirements are set out in detail in the Planning Portal guidance notes for completing a tree work application (an extract of the guidance has been included within the background papers).
- 1.10 The Council's Tree Section balanced the above factors and felt that, considering the tree's value, its removal would be premature without further evidence to demonstrate that it was the cause of the damage.
- 1.11 The Provisional TPO was subsequently made for the reasons set out above and as more particularly set out in the Arboricultural Officer's report.
- 1.12 Subsequent to making the TPO the City Council received one objection.

2 Objection

- 2.1 The Council's Legal Service received a letter dated 24th May 2019 from MWA Arboriculture objecting to the TPO on the grounds that:

The tree is considered to be a contributory cause of root induced clay shrinkage subsidence damage to 55 Hamilton Terrace and that the Order was made prior to site investigations being undertaken which are said to conclude that:

- There is a plastic clay subsoil below the foundations susceptible to volumetric change under the influence of vegetation;
- The subject maple tree is 14m from 55 Hamilton Terrace
- Engineering opinion is that there is damage to 55 Hamilton Terrace due to clay shrinkage subsidence
- On the basis of the evidence available, it is our opinion that there is damage consistence with the influence of the maple tree on the soils below foundation level;
- The tree is too close to the affected building for appropriate pruning to offer a viable long term solution in abating its influence;
- If the tree is retained, even with pruning, further damage is likely at some point in the future;
- If stability is to be restored to 55 Hamilton Terrace, the maple tree will need to be removed; and
- The view of the tree is extremely restricted and is not viewable from a public place

3. Response to Objection

- 3.1 The City Council's Arboricultural Officer responded to the objection by letter and email dated 19th June 2019. The Officer considers the tree is of high amenity value and makes a positive contribution to the character and appearance of the conservation area. The Officer notes that the young mature tree is in good condition and has a significant potential lifespan and is clearly visible from Hall Road as well as being overlooked by several nearby properties.
- 3.2 The Officer also considers that despite some evidence being submitted after the TPO was made, including a report from an arboricultural consultant, a site investigation report, crack monitoring all received on 18th April 2019 and further crack monitoring results received on 18th August 2019, this further evidence would still be insufficient to justify the removal of the tree (even if it had been submitted at an earlier date). This additional information submitted has been included with the background papers for information purposes.
- 3.3 The Officer acknowledges that the making and confirmation of the TPO does not preclude the removal of the tree in the future if an application is submitted, supported by an appropriate level of evidence to the demonstrate that, on the

balance of probabilities, the tree is contributing to the damage at 55 Hamilton Terrace and that tree removal is the appropriate remedy.

4. Ward Member Consultation

4.1 Ward Members have been consulted in relation to this matter. No responses have been received at the time of finalising this report. Any responses received between the time of finalising this report and the date of the sub-committee will be presented at the sub-committee.

5. Conclusion

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

(a) NOT TO CONFIRM Tree Preservation Order No. 649 (2019); OR

(b) TO CONFIRM Tree Preservation Order No. 649 (2019) with or without modification with permanent effect.

<p>IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT CHRISTOPHER TODMAN, LEGAL SERVICES ON 020 7641 1256 (Email ctodman@westminster.gov.uk)</p>
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Local Government (Access to Information) Act 1985

Background Papers

1. Copy of Provisional TPO 649 (2019)
2. Photographs of T1
3. Objection Letter from MWA Arboriculture dated 24th May 2019
4. Response Letter from City Council's Arboricultural Officer dated 19th June 2019
5. Report of Council's Arboricultural Officer dated 16th April 2019 recommending making of the Provisional Order
6. Evidence submitted to support subsidence claim, received after the Provisional TPO was made, and consisting of:
 - Arboricultural Report from MWA Arboriculture, dated 21 November 2018
 - Site Investigation report
 - Crack monitoring dated 13 December 2018, sheets 1 and 2
 - Crack monitoring dated 19 August 2019, sheets 1 and 2
7. Extract from Planning Portal guidance for completing a TPO application, in relation to subsidence