



City of Westminster

Executive Summary
and Recommendations

Title of Report: Tree Preservation Order No. 661 – 57 Hamilton Terrace, NW8 9RG

Date: 29th September 2020



Summary of this Report

On 30th April 2020 the City Council made a provisional Tree Preservation Order (TPO) to protect one poplar tree (labelled T1 on the TPO plan) and one Lombardy poplar tree (labelled T2 on the TPO plan). Both are located in the back garden of 57 Hamilton Terrace, London, NW8 9RG.

The TPO is provisionally effective for a period of six months from the date it was made (30th April 2020) 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 trees have high amenity value and make a positive contribution 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 poplar tree (T1), considered it expedient in the interests of amenity that a TPO was made, in order to safeguard preservation and future management.

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

Objections to the TPO were been received from:-

- MWA Arboriculture Ltd, Bloxham Mill Business Centre, Barford Road, Bloxham, Banbury, OX5 4FF
- The Owner of no. 57 Hamilton Terrace, London, NW8 9RG

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. 661 (2020); OR

(b) TO CONFIRM Tree Preservation Order No. 661 (2020) with or without modification with permanent effect.



City of Westminster

Committee Report

Item No:	9
Date:	29 th September 2019
Classification:	General Release
Title of Report:	Tree Preservation Order No. 661 (2020) 57 Hamilton Terrace, London, NW8 9RG
Report of:	57 Hamilton Terrace
Wards involved:	Regents 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.
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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 661 (2020) authorised under delegated powers was served on all the parties whom the Council is statutorily required to notify and took effect on 30th April 2020.
- 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 661 (2020) was made following the receipt by the City Council of six weeks’ notice of intention to remove the poplar tree (shown labelled T1 of the TPO Plan). A Lombardy poplar (T2) at the same address is also proposed for inclusion on the TPO in the interests of amenity, although the Council has not received a notification of intent for its removal. Under section 211 of the 1990 Act it is a defence to the offence of removing a tree in a conservation area if the person undertaking the works has provided 6 weeks’ notice to the local planning authority in advance of doing so. The service of such a notice effectively leaves the City Council in a position where it must either accept the notice and allow for the tree to be removed or to take further protective action by making a TPO.
- 1.4 The trees are located in the rear garden of 57 Hamilton Terrace. They are both clearly visible from Hall Road to the north east. The trees can also be seen from the rear of various properties on Hamilton Terrace, Maida Vale. The poplar tree (T1) is a mature specimen, about 11m tall. The Lombardy poplar (T2) is a younger mature tree with a tall, slender form and has an approximate height of 20m. By virtue of their form and location, the trees make a significant contribution to public amenity.
- 1.5 The trees were considered by the Council’s Tree Section to have high amenity value and to make a position contribution to the character and appearance of the conservation area. The Provisional TPO was subsequently made for the

reasons set out above and as more particularly set out in the Arboricultural Officer's report.

1.6 The initial reasons given by the Applicant for the proposed removal of the poplar tree were:

- to prevent ongoing subsidence damage to the neighbouring property at 55 Hamilton Terrace, alleged to be caused by roots from the poplar tree T1.

1.7 The evidence submitted by the applicant in support of the proposed removal of the poplar T1 consisted of:

- Site investigation reports from investigation visits on 14 December 17, 22 November 2018 and 6 December 2019;
- Soil analysis;
- Root identification;
- Crack Monitoring;
- Arboricultural Assessment Report; and
- Letter from the Building surveyor to the tree owner.

1.8 The Council's Tree Section was of the view that the technical evidence provided was insufficient to conclude that the movement to 55 Hamilton Terrace is caused by tree roots or to determine which trees, if any, are causing the movement.

1.9 A future TPO application to remove the tree on the grounds of alleged subsidence damage will require the following information in addition to the evidence already submitted: A report by an engineer or surveyor, to include a description of damage, vegetation, monitoring data, soil, roots, alternative repair proposals and estimates of costs of repairs. Also, level monitoring results over a period sufficient to demonstrate that the movement is seasonal and therefore tree-related. 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 amenity value of the poplar T1, its removal would be premature without further evidence to demonstrate that it was the cause of the damage.

1.11 T2 was included on the TPO because it has high amenity value and because it is possible that it could also be implicated in the damage to 55 Hamilton Terrace. Protection by the TPO ensures that if any proposal is put forward for its removal, that proposal will be supported by appropriate levels of evidence.

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 two objections.

2 Objection from MWA Arboriculture

2.1 The Council's Legal Service received a letter dated 28th May 2020 from MWA Arboriculture objecting to the TPO on the grounds that:

- The poplar tree T1 is considered to be implicated as a cause of root induced clay shrinkage subsidence damage to 55 Hamilton Terrace, that the view of the tree is extremely restricted and that it is not viewable from a public place.
- The following facts were listed in support of this view:
 - i. There is plastic clay subsoil below the foundations susceptible to volumetric change under the influence of vegetation;
 - ii. Roots from the poplar tree have been recovered from below foundation level (to a depth of 1.5m below ground level in TP1/BH1) of no 55 Hamilton Terrace, confirming its influence on the soil;
 - iii. Engineering opinion is that there is damage to 55 Hamilton Terrace due to clay shrinkage subsidence;
 - iv. Crack monitoring has recorded a pattern of crack movement that is consistent with volumetric changes in the soil associated with changing moisture contents including that related to soil drying by vegetation; and
 - v. If the tree is retained, even with pruning, further damage is inevitable

3. Response to Objection

- 3.1 The City Council's Arboricultural Officer responded to the objection by letter and email dated 16th June 2020. The Officer considers the poplar tree (T1) to be in good condition, with a significant potential lifespan. It has significant amenity value and makes a positive contribution to the character and appearance of the conservation area. The Officer notes that the tree is clearly visible from Hall Road and is overlooked by many properties.
- 3.2 Although some evidence was submitted in support of the proposed tree removal, the evidence is not adequate to reach a firm conclusion with respect to T1. Whilst the submitted evidence does indicate that seasonal movement to the property at 55 Hamilton Terrace may be occurring, in the absence of any level monitoring and a sufficiently detailed structural engineers or surveyors report it is not possible to conclude that the movement is caused by tree roots or to determine which tree(s) are causing the movement or to conclude that tree removal is the appropriate remedy to the movement.
- 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 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 to the movement.

4. Objection from the Owner of no. 57 Hamilton Terrace, London, NW8 9RG

The Council's Legal Service received a letter dated 12th May 2020 from the Owner of no. 57 Hamilton Terrace objecting to the TPO on the grounds that:

- Poplar trees T1 and T2 are unsuitable for the small garden environment and clay soil as they are fast growing with high water demand;
- The garden at 57 Hamilton Terrace has been planted with maple trees better suited to the environment, but these cannot thrive due to the presence of the dominant poplars;
- The trees are destructive to foundations and walls. This is supported by the evidence submitted in relation to damage at no 55 Hamilton Terrace. In addition T1 is abutting a garden wall and will soon destroy it;
- Works in the neighbouring garden have restricted the rooting area for T1, leading to more water stress in the garden of 57 Hamilton Terrace. The ground is hard and all of the trees are suffering; and

- The Lombardy poplar T2 is a significant height. Branches are breaking off. It could potentially cause damage to property and children playing underneath.

5. Response to Objection

5.1 The City Council's Arboricultural Officer responded to the objection by letter and email dated 16th June 2020. The Officer considers the poplar trees at 57 Hamilton Terrace appear to be in good condition, with considerable expected lifespans. They have significant amenity value and make a positive contribution to the character and appearance of the conservation area. The Officer notes the presence of large trees in a garden can affect other plants and smaller trees, but this is not a reason not to confirm the TPO. The Officer states the TPO no 661 was made in response to a conservation area of intent to remove T1, on the basis of alleged subsidence damage to the property at 55 Hamilton Terrace. Although evidence was submitted in support of the proposal the evidence was not adequate to reach a firm conclusion with respect to T1.

6. Ward Member Consultation

6.1 The 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.

7. Conclusion

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

(a) NOT TO CONFIRM Tree Preservation Order No. 661 (2020); OR

(b) TO CONFIRM Tree Preservation Order No. 661 (2020) with or without modification with permanent effect.

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT CHRISTOPHER TODMAN, LEGAL SERVICES ON 07966 198 687 (Email ctodman@westminster.gov.uk) OR GEORGIA HEUDEBOURCK, LEGAL SERVICES ON 078 1705 4603 (Email gheudebourck@westminster.gov.uk)
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Local Government (Access to Information) Act 1985

Background Papers

1. Copy of Provisional TPO 661 (2020)
2. Photographs of T1 and T2
3. Objection letter from MWA Arboriculture dated 28 May 2020 and supporting evidence
4. Response letter from the City Council's Arboricultural Officer to MWA Arboriculture dated 16th June 2020
5. Objection Email from the Owner of no. 57 Hamilton Terrace dated 12th May 2020
6. Response letter from the City Council's Arboricultural Officer to the Owner of no. 57 Hamilton Terrace dated 16th June 2020
7. Report of Council's Arboricultural Officer dated 17th March 2020 recommending making of the Provisional Order