



City of Westminster

Executive Summary and Recommendations

Title of Report: Tree Preservation Order No. 681 – 50 Springfield Road London NW8 0QN

Date: 23 November 2021



Summary of this Report

On 24 June 2021 the City Council made a provisional Tree Preservation Order (TPO) to protect one Japanese maple tree (labelled T1 on the TPO plan) located at 50 Springfield Road, London NW8 0QN (the Property). The TPO is provisionally effective for a period of six months from the date it was made (24 June 2021) during which time it may be confirmed with or without modification. If not confirmed, the TPO will lapse after 24 December 2021. The TPO was made as the tree makes a significant contribution to local amenity and the residential outlook of the surrounding property and makes a positive contribution to the St John's Wood Conservation Area.

The TPO was made following receipt of six weeks' notice of intent (a S211 notification) to remove one Japanese maple (T1) from the rear garden of 50 Springfield Road. The tree is protected by virtue of its location within the St John's Wood conservation area. The reasons given for the proposed removal of the tree are that the tree is causing excessive and unacceptable inconvenience to the occupier of the property due to its proximity to the rear elevation, that it is an over mature tree with poor structural form and that there are limited options to sustainably manage the tree through pruning. The s211 notification also included a proposal to remove one cherry tree from the front garden of 50 Springfield Road but this tree is not recommended for inclusion on the TPO.

In general terms the confirmation of a provisional TPO does not preclude the appropriate management or removal of the protected trees in the future, subject to the merits of a TPO application.

Objections to the TPO were received from:

- The Owner of the Property and the Owner of the adjoining property.

Recommendations

The Sub-Committee should decide EITHER

(a) TO CONFIRM Tree Preservation Order No. 681 (2021) with or without modification with permanent effect; OR

(b) NOT TO CONFIRM Tree Preservation Order No. 681(2021).



City of Westminster

Committee Report

Item No:

Date:

Classification:

Title of Report:

Report of:

Wards involved:

Policy context:

Financial summary:

Report Author:

Contact details

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 681 (2021) authorised under delegated powers was served on all the parties whom the Council is statutorily required to notify and took effect on 24 June 2021.
- 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 City 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 681 (2021) was made following the receipt by the City Council of six weeks’ notice of intention to remove one Japanese maple (T1) from the rear garden of 50 Springfield Road (shown labelled T1 of the TPO Plan). Under s211 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 Japanese maple T1 is in the rear garden of 50 Springfield Road and provides a green leafy outlook to neighbouring residents. There is a limited view of the tree from Springfield Road, glimpsed through the gap between numbers 50 and 52 Springfield Road. The tree is about 9m tall with a naturally rounded and open canopy. It has lost one structural limb on the upper west side, which leaves a slight gap in the canopy cover, and it appears to have also been subject to several branch removals on this side of the crown. However, the loss of these branches does not significantly detract from the quality of the well-branched crown structure and overall, the tree is considered to have a good form.
- 1.5 Japanese maples are relatively common in Westminster as small shrubby specimens, but large, mature Japanese maples like this one are relatively rare. This tree is not known to have a specific cultural or historic value, but trees are a key component of the conservation area, and so contribute to this general cultural value.

- 1.6 The scale and form of the Japanese maple are such that they are in proportion with the garden and the property at 50 Springfield Road. The trunk of the tree is about 3m from the rear elevation of the property and some of the branches in the upper crown are touching the building. The relationship between the tree and the building could be managed through judicious pruning.
- 1.7 The tree is considered by the Council's Tree Section to have significant amenity value and makes a positive contribution to the St John's Wood 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.
- 1.8 The initial reason given by the applicant for the proposed removal of the tree (T1) was:
- the tree is causing excessive and unacceptable inconvenience to the occupier of the property due to its proximity to the rear elevation, that it is an over mature tree with poor structural form and that there are limited options to sustainably manage the tree through pruning
- 1.9 No technical evidence was submitted with the application.

Subsequent to making the TPO the City Council received two objections

2 Objection from the owner of the Property

- 2.1 The Council's Legal Service received an email dated 27 July 2021, from the owner of the property objecting to the TPO on the grounds that:
- The tree may cause subsidence damage to the house in the future.
 - The Japanese maple T1 is causing damage to the boundary wall.
 - The tree is a nuisance to your neighbour and cutting the tree down is permitted as an abatement of the nuisance under regulation 14 of the Town and Country (Tree Preservation) (England) Regulations 2012.

- In making the TPO the City Council has not followed Government guidance or industry best practice (TEMPO) in assessing the suitability of the tree for the TPO.
- The tree is not suitable for protection by a TPO, as it has limited public visibility, is dominant and overbearing, has a poor form, is overmature, has no cultural value, is not suitable for its setting and does not make a positive contribution to the landscape.
- The removal and replacement of the tree would meet the Council's policy objectives.
- The tree has 'negative amenity' and the problems it causes have not been resolved through previous pruning.

2.2 The objection from the property owner included a report from a Chartered Surveyor. The report considers that the tree may cause future structural damage to the house and is likely to be causing movement to the boundary wall and recommends that the tree is removed.

3. Objection from adjoining owner

3.1 The Council's Legal Service received an email dated 23 July 2021, from the owner of the adjoining property objecting to the TPO on the grounds that:

- The Japanese maple T1 is too large, too close to the house and causes shade to the house and garden. It has a negative impact and therefore causes negative amenity to the objector's home. Previous pruning has failed to resolve the problems caused by the tree.
- The tree is only partially visible from a public place and therefore has no public amenity value.
- The tree is not a native species.
- The tree is undermining the party wall between 50 and 52 Springfield Road.

4 Response to both objections

4.1 The City Council's Arboricultural Officer responded to the objections by letters dated 10 September 2021.

- The Officer's response considered that the Japanese maple T1 has significant amenity value and makes a positive contribution to the St John's Wood conservation area.
- The Officer stated removal of T1 on the grounds that it is too large, too close to the house and causes excessive shade and that it therefore has negative amenity is not considered to be justified. Instead, the Officer suggested these issues could be managed through pruning.
- The Officer also considered the removal of the tree on the grounds that the problems it causes cannot be managed through pruning is not considered to be justified. The Officer inspected the tree and found the tree had not previously been crown reduced, although it had been crown thinned. The Officer concluded a sensitive crown reduction would mitigate the issues of shading and dominance.
- Removal of T1 on the grounds of its limited visibility is not considered to be justified. Although it is located in a rear garden, with limited public visibility the tree is considered to make a positive contribution to local amenity and to make a significant contribution to the character and appearance of the St John's Wood conservation area.
- The assessment of the suitability of the tree for protection by a TPO was made in accordance with Government advice in a structured and consistent way. Government advice does not recommend the use of specific assessment tools such as the TEMPO method and TEMPO is not an industry standard.
- The Officer noted that removal of T1 on the ground of damage to the boundary wall has not been justified. If the tree is causing the damage, it is likely that the wall could be repaired without the need to remove the tree, using simple design modifications such as lintels.
- The Officer responded that it is true that the tree is close to the rear of the property. However, there are many protected trees in Westminster in areas of clay soil which are growing very close to properties, many of which have shallow foundations, and only a small number of these trees cause subsidence damage. The TPO does not preclude the success of a TPO application for the removal of T1, subject to the merits of the application. However, in the absence of evidence that

subsidence damage is occurring removal of the tree on this basis would be premature.

5 Further correspondence received from the Owner of the Property

5.1 The Council's Legal Service received two letters both dated 4 November 2021 from the Owner of the Property and the Chartered Surveyor in response to the Council's letter dated 10 September 2021. In summary:

- The Officer's letter contains a number of factual inaccuracies. The brick wall is not a lightweight structure.
- Whether the wall has been damaged by subsidence, heave or by direct impact of roots growing into the foundations, the result is still the same in that the wall is being adversely affected by the tree. No additional evidence is required to reach this conclusion as trial holes have already shown that the roots are interfering with the foundations.
- The report included images showing large tree roots against the external wall of the house and recommended the tree should be removed to protect the main building from the possibility of any further structural defects.
- The Officer stated that damage has to be caused to the property to be taken into consideration. This would not be reasonably foreseeable but actual damage. Foreseeability is the potential to cause damage.
- Internal works to the house have been carried out where it is understood there was internal damage, but this has not been taken into account.
- If the damage was caused by the tree but nothing is done about it, the result could be an expensive insurance claim and the homeowners being affected by a higher insurance premium for future years.
- There could be a potential claim to the council if the risk had been highlighted and if the council refused permission to do anything about it.
- The Owner of the Property has been notified by the insurer that the insurer believes the tree needs to be removed.

6 Response to the Chartered Surveyor

6.1 The City Council's Arboricultural Officer responded to the Property Owner's Chartered Surveyor, Tant Building Surveying Limited by letter dated 10 November 2021. The following is a summary of the response;

- The term 'lightweight structure' was used to describe structures such as walls, drains, paving and drives as opposed to buildings. Government advice on Tree Preservation Orders uses the term 'lighter structures' to describe walls, drains, paving etc.
- The trial hole shows that tree roots are growing alongside the wall foundations but does not demonstrate that they are interfering with the foundations.
- An application to remove the tree on the basis of damage to the wall would be judged on its merits. However, even if the tree is causing the damage to the wall, it is likely that the wall could be rebuilt or repaired without the need to remove the tree.
- In the absence of any structural damage to the house there are no grounds on which to make a compensation claim on this basis.
- Details were submitted of a trial excavation showing tree roots growing adjacent to the house foundations. However, necessary evidence to validate a TPO application was not submitted and in the absence of these levels of evidence, the officer cannot prejudge whether the tree is likely to be causing damage or not. The evidence required to validate a TPO application was detailed in the response letter.
- Should damage be observed to the property in future, the Owner should notify their insurers who will undertake the necessary investigations to determine the cause of the movement. If T1 is found to be the cause of the movement then the Council could decide to allow it to be removed, subject to the merits of a TPO application.

7 Ward Member Consultation

7.1 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.

8 Conclusion

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

(a) TO CONFIRM Tree Preservation Order No. 681 (2021) with or without modification with permanent effect.; OR

(b) NOT TO CONFIRM Tree Preservation Order No. 681 (2021).

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT KIRSTEN CHOCHAN , LEGAL SERVICES (Email kchohan@westminster.gov.uk) OR GEORGIA HEUDEBOURCK, LEGAL SERVICES ON 078 1705 4603 (Email georgia.heudebourck@rbkc.gov.uk)

Local Government (Access to Information) Act 1985

Background Papers

1. Copy of Provisional TPO 681 (2021)
2. Photograph of T1
3. Objection letter from the owner of the Property dated 27 July 2021
4. Report from Chartered Surveyor, Tant Building Surveying Ltd dated 15 July 2021.
5. Response letter from the City Council's Arboricultural Officer to objector 1 dated 10 September 2021.
6. Objection email from adjacent property dated 23 July 2021
7. Response letter from the City Council's Arboricultural Officer to objector 2 dated 10 September 2021.
8. Further objection letter from owner of the Property dated 4 November 2021
9. Letter from the owner of the Property's Chartered Surveyor dated 4 November 2021
10. Response letter from the City Council's Arboricultural Officer to Chartered Surveyor dated 10 November 2021
11. Report of Council's Arboricultural Officer dated 18 June 2021 recommending making of the Provisional Order