



City of Westminster

Executive Summary
and Recommendations

Title of Report: Tree Preservation Order No. 663 – 48 Blomfield Road,
London, W9 2PD

Date: 29 September 2020



Summary of this Report

On 20 May 2020 the City Council made a provisional Tree Preservation Order (TPO) to protect one Tree of Heaven tree (labelled T1 on the TPO plan) located at 48 Blomfield Road, London, W9 2PD (the Property). The TPO is provisionally effective for a period of six months from the date it was made (20 May 2020) during which time it may be confirmed with or without modification. If not confirmed, the TPO will lapse after 20 November 2020.

The TPO was made because the tree makes a valuable contribution to public amenity, to the outlook from nearby properties and to the character and appearance of the Maida Vale conservation area. The City Council, having been made aware of the potential to prune or remove the tree for redevelopment works, 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.

Objections to the TPO were received from the adjoining owner and 49 Blomfield Road Limited, the freeholder of 49 Blomfield Road

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. 663 (2020); OR

(b) TO CONFIRM Tree Preservation Order No. 663 (2020) with or without modification with permanent effect.



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 663 (2020) authorised under delegated powers was served on all the parties whom the Council is statutorily required to notify and took effect on 20th May 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 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 663 (2020) was made following the receipt by the City Council of six weeks’ notice of intention to remove one Tree of Heaven from 48 Blomfield 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 Tree of Heaven is located in the front garden of 48 Blomfield Road. It is a prominent tree, clearly visible along some distance of the road and from the bridge over the adjacent canal. The tree is a mature specimen in good condition and it is about 17 metres high, with a natural open crown. By virtue of its form and location, the tree makes a significant contribution to public amenity. The scale and form of the tree is such that it is in proportion with the garden and the property at 48 Blomfield Road. It is considered to make a positive contribution to the townscape and to be suitable in its location.

1.5 The initial reason given by the applicant for the proposed removal of the Tree of Heaven was;

to prevent ongoing damage to the neighbouring property at 49 Blomfield Road, alleged to be caused by roots from the tree of heaven.

1.6 The evidence submitted by the applicant in support of the proposed removal of the Tree of Heaven T1 consisted of:

- Sketch plan;
- Site investigation report;
- Engineering appraisal report;
- Arboricultural Assessment Report

The site investigations and laboratory tests found:

- The Property foundations are 615mm below ground level;
- The soil is shrinkable clay and there is some evidence of desiccation; and
- Roots identified as Ailanthus (Tree of Heaven) and Salicaceae (willow or poplar) were found beneath the depth of the foundations

1.7 The tree was considered by the City Council's Tree Section to make a valuable contribution to public amenity, to the outlook from nearby properties and to the character and appearance of the Maida Vale 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.

Subsequent to making the TPO the City Council received two objections

2 Objection from Adjoining Owner

2.1 The Council's Legal Service received an email dated 29th May 2020 from the adjoining owner objecting to the TPO on the grounds that:

- The submitted site investigation report found tree of heaven roots in the trial pit at 49 Blomfield Road;
- The submitted Engineering Appraisal Report concludes that the damage to 49 Blomfield Road is caused by the roots and its recommendation is to remove the identified vegetation;
- The submitted Arboricultural Assessment report concludes that the Tree of Heaven should be removed; and
- Should the TPO be confirmed, the City Council will be held liable for any further subsidence damage.

3. Objection on behalf of 49 Blomfield Road Limited

3.1 The Council's Legal Service received an Email dated 11th June 2020 on behalf of the freeholder of 49 Blomfield Road objecting to the TPO on the grounds that:

- The Tree of Heaven (T1) is implicated in the damage to the property at 49 Blomfield Road;
- The evidence provided by the insurance company would be adequate to support its removal if it were not protected by the TPO;
- T1 is leaning towards the pavement and causing damage to the front boundary wall at no 48 Blomfield Road and is concerned that the tree may fall onto the pavement and road;
- The TPO is delaying the routine repair and redecoration of no 49 Blomfield Road, which will increase the work needed and the cost;
- Previously the City Council had not found the tree to be of sufficient amenity value to justify a TPO and therefore the City Council cannot rely on amenity value to justify the removal of the tree;
- Making the TPO in response to the proposal to remove it is a misuse of power, the City Council's intention seems to be to enable it to use TPO powers to obtain a cost estimate of tree removal and building repair, information which would not be required with a non-TPO tree;
- If the tree is not removed this year this will delay repairs to 2022, due to the need to cut the tree down in late summer;
- Tree of Heaven is an invasive pest and a threat to plant health, the environment and biodiversity; and
- It has numerous negative characteristics including its fast growth rate, suckering habit, profuse seeding, production of chemicals harmful to other trees, foul smell, lack of biodiversity benefits, irritating sap and profuse pollen.

4. Response to both Objections

4.1 The City Council's Arboricultural Officer responded to both objections by letters and emails dated 16th June 2020. The Officer's response considered that the Tree of Heaven at 48 Blomfield Road is in a good condition, with a considerable expected lifespan. The Officer also considered that it has significant amenity value and makes a positive contribution to the character and appearance of the conservation area.

- 4.2 Although evidence was submitted in support of the proposal, the evidence was not adequate to support the removal of T1.
- 4.3 The making of the Tree Preservation Order 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 49 Blomfield Road and that tree removal is the appropriate remedy to the movement. Nor would the TPO preclude the removal of T1 on the grounds of other structural damage or on the grounds of its condition, if an application is submitted supported by appropriate levels of evidence. The species of the tree does not affect its suitability for protection by a TPO.

5. Ward Member Consultation

- 5.1 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.

6. Conclusion

- 6.1 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. 663 (2020); OR
- (b) TO CONFIRM Tree Preservation Order No. 663 (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 663 (2020)
2. Photograph of T1
3. Objection Email from adjoining owner dated 29th May 2020
4. Response letter from the City Council's Arboricultural Officer to adjoining owner dated the 16th June 2020
5. Objection Email from 49 Blomfield Road Limited dated 11th June 2020
6. Further objection Email from 49 Blomfield Road Limited dated 15th June 2020
7. Response letter from the City Council's Arboricultural Officer to 49 Blomfield Road Limited dated the 16th June 2020
8. Report of Council's Arboricultural Officer dated 28th May 2020 recommending making of the Provisional Order