



City of Westminster

Executive Summary
and Recommendations

Title of Report: Tree Preservation Order No. 683 – 17 Blomfield Road,
London W9 1AD

Date: 22 February 2022



Summary of this Report

On 1 October 2021 the City Council made a provisional Tree Preservation Order (TPO) to protect two Silver Birch trees (labelled T1 and T2 on the TPO plan) located at 17 Blomfield Road, London W9 1AD (the Property). The TPO is provisionally effective for a period of six months from the date it was made (1 October 2021) during which time it may be confirmed with or without modification. If not confirmed, the TPO will lapse after 1 April 2022. The TPO was made because the tree makes a valuable contribution to public amenity and to the character and appearance of the conservation area.

The TPO was made following receipt of six weeks' notice of intent (a S211 notification) to remove two Silver Birch trees from the front garden of 17 Blomfield Road. The trees are protected by virtue of their location within the Maida Vale conservation area. The reasons given for the proposed removal of the trees are that they are causing severe hayfever to a resident of the property. The City Council considered it expedient and in the interests of amenity that a TPO was made, in order to safeguard the preservation and future management of the trees.

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.

An objection to the TPO has been received from: -

- **The Owner of the Property** (represented by Sam Robinson QC of Garden Court Chambers, 57-60 Lincoln's Inn Fields, London WC2A 3LJ).

Recommendations

The Sub-Committee should decide EITHER

(a) TO CONFIRM Tree Preservation Order No. 683 (2021) with or without modification with permanent effect; OR

(b) NOT TO CONFIRM Tree Preservation Order No. 683 (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 683 (2021) authorised under delegated powers was served on all the parties whom the Council is statutorily required to notify and took effect on 1 October 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 683 (2021) was made following the receipt by the City Council of six weeks’ notice of intention to remove two Silver Birch trees from the front garden of 17 Blomfield Road (shown labelled T1 and T2 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 Silver Birch trees are located in the front garden of 17 Blomfield Road. They are prominent specimens, clearly visible from Blomfield Road and from Maida Avenue, viewed across the canal. The trees are about 20 metres tall with naturally upright and open canopies. The scale and form of the trees are such that they are in proportion with the garden and the property. They are growing on the front boundary, in a row with three limes which are protected by TPO Paddington no 1, and the five trees together form an attractive landscape feature.
- 1.5 The trees are considered by the Council’s Tree Section to have significant amenity value and make a positive contribution to 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.

1.6 The initial reason given by the applicant for the proposed removal of the trees was:

- The trees are causing severe hayfever to a resident of the property.

1.7 The applicant submitted medical records for the affected individual, demonstrating a proven allergy to birch pollen. Further details of the symptoms have been provided, which include coughing and breathing issues, and which cause great discomfort. It was stated that the sufferer takes prescription antihistamines, and that the allergy is ongoing and shows no sign of abating. The hayfever symptoms affect the sufferer during the spring and part of the summer each year. During the spring the residents cannot use the garden and keep the windows shut.

1.8 Hayfever is recognised as an inconvenient health problem, which for some sufferers can be very uncomfortable. However, the inconvenience of hayfever is usually short lived and varies in severity from year to year. It can be managed through practical steps such as keeping windows closed during periods of high pollen count and changing/washing clothes regularly.

1.9 Birch pollen is distributed by wind over very large areas. There are many birch trees in the Little Venice area and so removal of T1 and T2 would be unlikely to eliminate birch pollen or the associated hayfever symptoms. The allergenic nature of silver birch pollen, whilst recognised as inconvenient, is not usually considered to be sufficient reason to remove a protected tree.

1.10 The applicant has offered to plant replacement trees. Although this is appreciated, the removal of the trees on the basis of provision of replacement trees is not considered to be adequate justification for their removal. The loss of character and amenity which results from the removal of mature trees takes a considerable length of time to restore by planting replacement trees. If the City Council were to accept proposals for removal of mature trees on the sole basis of replacement trees being planted, this would quickly result in erosion in public amenity, and would skew the age structure of the tree population.

Subsequent to making the TPO the City Council received one objection

2 Objection

2.1 The Council's Legal Service received a letter dated 29 December, from the Owner of the Property's legal representation objecting to the TPO on the grounds that:

- The removal and replacement of the trees would have a significant impact on the quality of life of a resident (9-year-old) who suffers from severe hay-fever.
- The birch trees T1 and T2 could be replaced with a different species of tree and the replacement trees would protect the visual amenity provided by the existing trees.
- Replacement trees would have a long lifespan and would make a similar contribution to the landscape and to the character and appearance of the conservation area.

2.2 Enclosed Medical report of Professor Gideon Lack, Consultant in Allergy and Immunology:

The letter stated the following points: -

- The resident is poorly responsive to medications.
- There is a significant impact on the resident's quality of life
- The removal of the trees T1 and T2 would be sensible under the circumstances.

3. Response to Objection

3.1 The City Council's Arboricultural Officer responded to the objection by a letter dated 2 February 2022.

- The Officer's response included that Professor Lack has not provided any comment on whether there is likely to be any change in the severity of the symptoms - whether they could be expected to worsen or improve over time. The Officer did however appreciate the further evidence that had been submitted regarding the impact of the birch pollen and that Professor Lack has advised removal of the trees would be sensible.
- The Officer noted the Applicant's offer to plant replacement trees, however, if the TPO is not confirmed then the Council cannot secure replacement trees.
- The Officer also commented that the loss of character and amenity which results from the removal of mature trees takes a considerable length of time to restore by planting replacement trees.
- The Officer agreed that if the medical evidence is sufficient to justify tree removal, then the removal and replacement of the trees would be justified.
- The Officer stated the new information from Professor Lack will be considered by the Planning Application's Committee very carefully, weighing up the time it would

take for new trees to replace the amenity value of T1 and T2, against the evidence you have submitted in support of tree removal.

4. Ward Member Consultation

4.1 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.

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) TO CONFIRM Tree Preservation Order No. 683 (2021) with or without modification with permanent effect.; OR

(b) NOT TO CONFIRM Tree Preservation Order No. 683 (2021).

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT LINDA BOATENG, LEGAL SERVICES (Email lboateng@westminster.gov.uk) OR GEORGIA HEUDEBOURCK, LEGAL SERVICES ON 07790 979410 (Email Georgia.heudebourck@rbkc.gov.uk)

Local Government (Access to Information) Act 1985

Background Papers

1. Copy of Provisional TPO 683 (2021)
2. Photographs of T1 and T2
3. Objection letter from Sam Robinson QC of Garden Court Chambers dated 27 January 2022.
4. Medical report of Professor Gideon Lack, Consultant in Allergy and Immunology dated 26 January 2022.
5. Response letter from the City Council's Arboricultural Officer dated 2 February 2022.
6. Email from Sam Robinson QC confirming the objection remains dated 9 February 2022.
7. Report of Council's Arboricultural Officer dated 29 September 2021 recommending making of the Provisional Order
8. Initial medical evidence submitted by Applicant