



City of Westminster

Executive Summary
and Recommendations

Title of Report: Tree Preservation Order No. 697 – 92 Clifton Hill,
London NW8 0JT

Date: 31 October 2023



Summary of this Report

On 19 June 2023 the City Council made a provisional Tree Preservation Order (TPO) to protect one London plane (labelled T1 on the TPO plan) located at 92 Clifton Hill, London NW8 0JT (the Property). The TPO is provisionally effective for a period of six months from the date it was made (19 June 2023) during which time it may be confirmed with or without modification. If not confirmed, the TPO will lapse after 20 December 2023.

The TPO was made following receipt of six weeks' notice of intent (a S211 notification) to remove one London plane from 92 Clifton Hill. The tree is protected by virtue of its location within the St John's Wood Conservation Area. The reason given for the proposed removal of the tree is because of clay shrinkage subsidence damage at the neighbouring property of 47 Belgrave Gardens, NW8 0RE, alleged to be caused by roots from the London plane.

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 was received from the owner of 47 Belgrave Gardens.

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. 697 (2023); OR

(b) TO CONFIRM Tree Preservation Order No. 697 (2023) 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:

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: 32, 34, 39 of the City Plan 2019 - 2040 April 2021

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 697 (2023) authorised under delegated powers was served on all the parties whom the Council is statutorily required to notify and took effect on 19th June 2023.
- 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 697 was made following the receipt by the City Council of six weeks’ notice of intention to remove one London plane from the rear garden of 92 Clifton Hill (shown labelled T1 of the TPO Plan). Under s211 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 London plane is located in the rear garden of 92 Clifton Hill. The Arboricultural Officer’s report notes that T1 is a prominent tree, visible from Clifton Hill over and between the houses and is also highly visible from the rear gardens of adjacent properties. The tree is a mature specimen in good condition and it is about 20 metres high, with a broad and dominant crown. By virtue of its form and location, the tree makes a significant contribution to public amenity.
- 1.5 The scale and form of the tree is such that it is in proportion with the garden and the property at 92 Clifton Hill. It is considered to make a positive contribution to the townscape and to be suitable in its location. In general Clifton Hill has a leafy character and T1 sits well within this context.
- 1.6 The tree has been subject to previous crown reductions, in 2020 the City Council raised no objections to a crown reduction, to previous, most recent reduction points leaving a balanced crown, retaining shortened furnishing growth and at least 50% of fine branch structure. It would be appropriate to manage it by periodic crown reductions in the future and such management would not detract from its amenity value.

1.7 The initial reason given by the applicant for the proposed removal of the London plane was;

- because of clay shrinkage subsidence damage at the neighbouring property of 47 Belgrave Gardens, NW8 0RE, alleged to be caused by roots from the London plane.

1.8 The evidence submitted by the applicant in support of the proposed removal of the London plane T1 consisted of:

- Arboricultural Assessment Report
- Site investigation report
- Level Monitoring details

1.9 The site investigations and laboratory tests show:

- The property foundations are 1100mm below ground level.
- The subsoil is shrinkable clay.
- Roots identified as *Platanus* spp (London plane) were found beneath the depth of the foundations.

1.10 The London plane has significant amenity value and makes a positive contribution to the St John's Wood conservation area. In the absence of a longer period of level monitoring it is not possible to conclude that the movement is caused by tree roots. Furthermore, the applicants have not submitted an engineering appraisal report which should include a detailed assessment of the damage and options and costs of repairs if the tree is removed or retained.

1.11 Should further evidence be provided implicating T1 in subsidence damage to the property then the Council could decide not to confirm the TPO or to grant consent to an application for tree works. However, removal of T1, which has high amenity value, would be premature at this stage.

1.12 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 one objection.

2 Objection to the Provisional TPO:

2.1 The City Council's Legal Service received an email and letter dated 11th July 2023 from the Owner of 47 Belgrave Gardens objecting to the TPO on the following grounds:

2.2 Amenity

- In assessing whether it is in the interests of amenity, a "significant" factor that the local authority should take into effect is the "extent to which the trees or woodlands can be seen by the public" and "the trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public". It is not visible from the road or accessible by the public. It is only visible from a small number of houses on Clifton Hill and Belgrave Gardens and therefore the public visibility that is needed to demonstrate the contribution to the amenity that warrants a TPO does not exist.
- Furthermore, you will note from the relevant Planning Application (number 23/03089/TCA I 1 x London Plane (T1): Fell I 92 Clifton Hill London NW8 0JT) that there were no objections to the removal of T1 and rather, 100% support from the responses in favour of removal of the tree
- Government guidance clearly states that if the tree cannot be seen or is just barely visible from a public place, then a TPO might only be justified in exceptional circumstances - those exceptional circumstances are not satisfied In this case
- Westminster must as a minimum explain the particular importance of an individual tree by reference to its or their characteristics including size and form; future potential as an amenity; rarity, cultural or historic value; contribution to, and relationship with, the landscape; and contribution to the character or appearance of a conservation area. There has been no attempt to do this from the correspondence obtained and there are no reasonable grounds that justify Westminster treating this an exceptional situation, for the following reasons:
 - The London plane (T1) is not rare.
 - The tree is not a suitable tree to be growing so close to residential properties
 - The tree is too close to residential buildings and has a negative impact on the properties in the area.
 - The tree is not suited to small urban gardens and there is a general risk of damage to properties in the vicinity of the tree.
 - The tree does not contribute to the landscape or serve to screen any eyesore or any future development.
 - This area of northwest London is served by plenty of trees and green space.

2.3 Property Damage

- The Arboricultural Appraisal Report in respect of damage to our property concluded that the tree is the principal cause of the current subsidence damage and recommends that T1 London Plane is removed.
- Westminster is and has been on notice that the expert view is that the T1 is causing subsidence issues at our property and has not addressed this when issuing the TPO.
- Westminster Council will no doubt be aware of cases such as *Burge v South Gloucestershire Council* [2016] UKUT 300 (LC) where the landowner has been entitled to compensation for losses arising from the council's refusal to consent to the felling of a tree by maintaining a TPO. It is a surprise that this has not been addressed or taken into account in the council's thinking.

3 **Response to Objection**

3.1 The City Council's Arboricultural Officer responded to the objection by letter dated 25 July 2023. The Officer considered the objection and stated the following conclusions: -

3.2 Amenity

- **Visibility, size and form:** The London plane (T1) is located in the rear garden of 92 Clifton Hill. It is a prominent tree, visible from Clifton Hill over and between the houses and is also highly visible from the rear gardens of adjacent properties. It is about 20m tall, with a broad crown. By virtue of its size, form and location, the tree makes a significant contribution to public amenity.
- **Future potential as an amenity and tree condition:** The tree is a mature specimen in good condition. It has a long-life expectancy. The tree has been subject to previous crown reductions. In 2020 the City Council raised no objections to a crown reduction, to previous, most recent reduction points leaving a balanced crown, retaining shortened furnishing growth and at least 50% of fine branch structure. It would be appropriate to manage it by periodic crown reductions in the future and such management would not detract from its amenity value.
- **Rarity, cultural or historic value:** London planes are a relatively common species in Westminster, but London planes are the iconic tree of central London, so enjoy a general cultural value. 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 T1 contributes to this general cultural value.

- Contribution to, and relationship with, the landscape: It is not unusual to find large growing trees within urban gardens in Westminster. The scale and form of the tree is such that it is in proportion with the garden and the property at 92 Clifton Hill. It is considered to make a positive contribution to the townscape and to be suitable in its location, it also provides screening between properties. In general Clifton Hill has a leafy character and T1 sits well within this context.
- The Conservation Area Audit also says, "the existence of mature trees in front and back gardens in St John's Wood is a vital contributor to the arcadian character of the area" and "there are numerous views through open gaps to the sides and rear of buildings towards greenery and trees, often within back gardens".
- The London Plane (T1) is a prominent tree, visible from Clifton Hill over and between the houses and is also highly visible from the rear gardens of adjacent properties. Whilst there are other trees and parks within this part of North London and the borough of Westminster the loss of this tree would cause harm to the character and appearance of this part of the Conservation Area.

3.3 Property Damage

- Removal of T1 was proposed on the grounds that the tree roots are causing movement to the foundations of the property at 47 Belgrave Gardens. The following evidence was submitted in support of tree removal:
 - Arboricultural Assessment Report
 - Site investigation report
 - Level Monitoring details
- The Arboricultural Assessment Report. says that "For a more detailed synopsis of the damage please refer to the building surveyor's technical report." However, a building surveyor's or engineering appraisal report (which should include a detailed assessment of the damage and repair options and costs), was not submitted with the application.
- The level monitoring results were from between 30/11/2022 and 13/04/2023. The level monitoring for the parts of the house closest to the London plane (T1) showed some movement of the property; with continuous upward movement at the level station (4) closest to the London plane (T1), and initial upward movement from 30/11/2022 followed by some downward movement

from 06/02/2023 to 13/04/2023 at the level stations (3 and 5) at either corner of the rear of the property. The level monitoring results were insufficient to show seasonal movement.

- In summary, the submitted evidence did not have adequate level monitoring results or an engineering appraisal report, or any estimated costs of repairs, if the tree is removed or retained.
- The Council's Head of Building Control was consulted and advised the soil sample indicates the soil is not desiccated and the building foundation depth is satisfactory.
- Your objection also mentions a general risk of damage to properties in the vicinity, but if there is a general risk it does not necessarily follow the risk is high or foreseeable.
- I also note your reference to case law in relation to claims for damages and trees protected by a Tree Preservation Order. Should you be able to provide evidence to support T1 being the cause of damage to the property or other properties, please submit it, and the City Council will take this into account when considering whether or not to confirm the TPO. In addition, you have the option to submit a TPO application to remove the tree. If you do so and provide the necessary evidence in support of your application, the City Council would be in a better position to consider the merits of the application balanced with the amenity value of the tree, whilst also taking into account the possibility of a claim for compensation.

3.4 Public Consultation

- One submission of support had been received to a public consultation on the tree removal, the supporter stated: "The London Plane Tree (T1) casts a shadow over the gardens and plant life across the even numbers of Clifton Hill. My property 88, 86 90 and 92 are all impacted, and sunlight is blocked from this tree." and "If it is also causing subsidence and other damage to the adjacent property at Belgrave Gardens then it should be felled to ground level. This would stop any further damage and also bring back much needed sunlight to the adjacent gardens running down Clifton Hill. I support this application 100%."
- Regarding shade, shading by the tree was not given as a reason for its removal, furthermore, although the tree does cause some shading it is not considered to be of sufficient severity to merit the removal of the tree, and the

effect of shading can be limited by pruning the tree in line with consent previously given by Westminster City Council.

- Regarding subsidence or other damage, should further evidence be provided implicating T1 in subsidence damage to the property then the Council could decide not to confirm the TPO or to grant consent to an application for tree works. No other types of damage to the property have been included in the submitted documents. Removal of T1, which has high amenity value, would be premature at this stage.

3.5 Other matters

- The six-week Conservation Area notification for removal was made by your agent, MWA Arboriculture Limited. During the notification period, I asked your agent if there was any further information, such as a building surveyor's technical report, but I was informed that there was no such report.
- Unfortunately, the six-week Conservation Area notification for the removal of the tree meant I did not have time for further consultation with yourself or MWA. If the TPO was not made before the end of the six-week notification period, the tree would have been at risk of removal, and it was considered expedient to make the TPO.

4 **Further objection**

4.1 The City Council's Legal Service received a further email from the Owner of 47 Belgrave Gardens on 25 July 2023. The following points were made:

- The content of the letter does not cause me to withdraw the objections that I made in my previous letter.
- In particular, I do not see a clear case for the tree "making a significant contribution to public amenity" and Westminster has not put forward any expert analysis that negates the clear opinion and conclusion of the arborists in their 20 February 2023 report that "*T1 London Plane is the principal cause of the current subsidence damage*" (the damage of which Westminster should note has worsened over the summer months, as expected) - your letter highlights the fact that the monitoring found continuous movement at the monitoring station that is closest to the T1 London Plane.

5. **Further objection**

5.1 The City Council's Legal Service received a further email from the Owner of 47 Belgrave Gardens on 23 August 2023. The Email includes a further monitoring review report, prepared by William Hunt Consulting. The Email also stated that the expert report concludes that the movement of our house is consistent with a building suffering from the effects of tree root induced clay shrinkage subsidence.

5.2 The Summary of Findings at page 7 of the report are as follows:

- The pattern of movement recorded at 47 Belgrave Gardens is consistent with a building suffering from the effects of tree root induced clay shrinkage subsidence (TRICCS). Upward movement was recorded commencing September through to November 2021 which is consistent with the increase in precipitation as shown within Figure (iv) on page 6 of the report in July and October 2021. Further upward movement was recorded from August 2022 which is in line with the increase in rainfall commencing in August of that year.
- Downward movement of the property was recorded within the satellite monitoring data from November 2021 to July 2022, due to a reduction in rainfall during the first quarter of 2022 as well as towards the end of 2021.
- Note – The reflection points taken at roof level may suppress the full extent of foundation, although follow the same pattern of movement.

6. Response to the further objection

6.1 On 7 September 2023 the City Council's Arboricultural Officer sent a letter in response to the email of 23 August 2023 and attached Monitoring Review Report. The Officer considered the report and made the following conclusions:

- The recent Monitoring Review Report dated 27th of July is based on satellite monitoring data (which is different to level and crack monitoring) and the findings are inconsistent with the phenology of the trees, for example for tree related subsidence one would not ordinarily expect to see upward movement to the part of the building said to be affected by the trees whilst trees are still in leaf and actively removing water from the soil (upward movement is shown between July and September 2022), or downward movement when the trees are out of leaf (downward movement is shown between November 2021 to March 2022), for tree related subsidence one would expect to see opposite directions of movement at these times of the year.
- Whilst the reports and investigations that have been provided so far show movement to the building, they would not form a valid TPO application, if one

was made. A valid application requires a report by an engineer or surveyor with a description of the damage and crack pattern to the building, and proposals and estimated costs of options to repair the damage, which have not been provided. In addition, the level monitoring data submitted with the 6-week Conservation Area notification was insufficient to show seasonal movement that could be attributed to trees. Whilst you have provided some further information with the satellite monitoring data this would still not be enough to validate a TPO application and does not adequately demonstrate tree related subsidence. Your insurers will be aware of the requirements for information to accompany a tree work application, and I would expect them to submit the necessary information in due course should they wish to pursue the removal of the tree, at which point the Council will be able to make an assessment of the merits of the tree balanced with the reasons put forward for tree work/ removal and with regards to the necessary supporting information.

- Regarding consultations, a public consultation was undertaken during the 6-week Conservation Area notification and the head of Westminster City's building control was also consulted, and as stated in my previous letter I also asked your agent (MWA) if there was any further information, such as a building surveyor's technical report, but I was informed that there was no such report. Unfortunately, the six-week Conservation Area notification for the removal of the tree meant I did not have time for further consultation with yourself or MWA. If the TPO was not made before the end of the six-week notification period, the tree would have been at risk of removal, and it was considered expedient to make the TPO on a provisional basis.

7. Further objection

7.1 The City Council's Legal Service received a further objection Email from the Owner of 47 Belgrave Gardens dated 18 September 2023. The following points were made:

- As a reminder, an LPA is entitled to make a TPO provision where it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area. A key factor in demonstrating there is amenity value in a tree is the visibility of that tree and as per government guidance, if a tree cannot be seen or are just barely visible from a public place, a "*TPO might only be justified in exceptional circumstances*". Mr Newman's response on this point was that T1 is a prominent tree, visible from Clifton Hill over and between the houses and is also highly visible from the rear gardens of the adjacent properties and by virtue of this, it makes a significant contribution to the public amenity. In practice:

- a. T1 is only visible from any place along the entire Clifton Hill Road if you look between the properties of 92 and 90 Clifton Hill. It is not otherwise visible from a public place on Clifton Hill.
 - b. T1 is visible from a few of the back gardens of the properties on Clifton Hill but these are not public places
 - c. Therefore, T1 is “*barely visible from a public place*” and the LPA must demonstrate “*exceptional circumstances*” to impose a TPO.
- The other grounds set out in the City Council’s Arboricultural Officer letters are not exceptional circumstances. They are that the tree is mature and in good condition with a long-life expectancy, the tree contributes to the general cultural value (though it cannot be seen) and that it makes a positive contribution to the landscape (again, though it cannot be seen). The 25 July letter also quotes the St John’s Wood Conservation Area Audit, though it should be noted that this document dates from 2008 (i.e. 15 years old) and the St Johns Wood Society has not commented against the removal of the tree (an organisation which is very active in commenting on planning matters when proposals are out of kilter with what fits best with the local community). The tree in question is not suitable to its setting, especially given the damage it is causing to my house.
 - The 7 September 2023 letter comments on the Monitoring Review Report and concludes that the movements have not taken place as would be expected at the relevant time of year. The fact that movement is not in the direction always expected is quite easily explained by the total precipitation numbers (mm), also provided in the report. The findings are entirely consistent with tree root induced clay shrinkage when the level of rain fall is also taken into account. This key part of the report is not referenced in the 7 September letter.
 - The 7 September letter further states that the reports and investigations would not form a valid TPO application if one was made. This is not the relevant point – the point is that Westminster does not have the necessary grounds to impose a TPO (there is no amenity value) and there is no further “application” being made. However, in an event, the T1 is causing damage to my property which I would assume is taken into account in deciding whether to impose a TPO. I disagree that the evidence does not demonstrate this; the higher than usual summer rainfall explains why the tree-induced movement has not followed the expected pattern at all times.

8. Response E-mail by the City Council’s Arboricultural Officer

- 8.1 On 19 September 2023 the City Council's Arboricultural Officer responded to the objector's letter dated 18 September 2023. The Officer confirmed receipt of the letter and also noted that the objector had referenced outdated government guidance (that was cancelled in 2014) from: Tree Preservation Orders: A Guide to the Law and Good Practice, by the Department for Communities and Local Government (2006).
- 8.2 The Officer noted that the current government guidance supersedes this, and does not include the wording that was used (e.g. "TPO might only be justified in exceptional circumstances").

9. **Response E-mail from Owner of 47 Belgrave Gardens.**

- 9.1 An E-mail response was received from the Owner of 47 Belgrave Gardens responded dated 23 September 2023. The E-mail noted that the updated government guidance provides the same position which in essence is that:
- Westminster must demonstrate that it is expedient in the interests of amenity to impose the TPO;
 - Westminster must be able to show that protection would bring a reasonable degree of public benefit in the present or future. I cannot see this is the case if T1 is only visible from one location (a narrow gap between two houses) on Clifton Hill, which itself is not a heavily used road by the public. To the extent there has been a response from neighbours, it is in favour of the removal of T1. The reasonable degree threshold is not met;
 - In addition to demonstrating public visibility, Westminster must also demonstrate the particular importance of an individual tree by reference to its characteristics and as per my letter, that threshold is also not met for T1.

10. **Conclusion**

- 10.1 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. 697 (2023); OR
- (b) TO CONFIRM Tree Preservation Order No. 697 (2023) with or without modification with permanent effect.

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT ROSS FLETCHER, LEGAL SERVICES (Email Rfletcher@westminster.gov.uk) OR GEORGIA HEUDEBOURCK, LEGAL SERVICES (Email gheudebourck@westminster.gov.uk)