



City of Westminster

Executive Summary
and Recommendations

Title of Report:

**Tree Preservation Order No. 689 – 63 Warwick
Avenue London W9 2PR**

Date:

20 December 2022



Summary of this Report

On 25 August 2022 the City Council made a provisional Tree Preservation Order (TPO) to protect one Lime tree (labelled T1 on the TPO plan) located at 63 Warwick Avenue London W9 2PR (the Property). The TPO is provisionally effective for a period of six months from the date it was made (25 August 2022) during which time it may be confirmed with or without modification. If not confirmed, the TPO will lapse after 25 February 2023. 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 Maida Vale Conservation Area.

The TPO was made following receipt of six weeks' notice of intent (a S211 notification) to remove one Lime tree (T1) from the from the side garden of 63 Warwick Avenue. The tree is protected by virtue of its location within the Maida Vale conservation area. The reason given for the proposed removal of the tree is that it is causing subsidence damage to 63 Warwick Avenue. A second lime tree is also alleged to be causing subsidence damage. This tree is protected by Tree Preservation Order Paddington no. 2, which was made in 1956

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:

- MWA Arboriculture Limited (Agent on behalf of the Owner of the Property).

Recommendations

The Sub-Committee should decide EITHER

(a) TO CONFIRM Tree Preservation Order No. 689 (2022) with or without modification with permanent effect; OR

(b) NOT TO CONFIRM Tree Preservation Order No. 689 (2022).



City of Westminster

Committee Report

Item No:

Date:

20 December 2022

Classification:

General Release

Title of Report:

Tree Preservation Order No. 689 (2022) – 63
Warwick Avenue London W9 2PR

Report of:

63 Warwick Avenue London W9 2PR

Wards involved:

Little Venice

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:

No financial issues are raised in this report.

Report Author:

Isaac Carter and Georgia Heudebourck

Contact details

icarter@westminster.gov.uk
Georgia.heudebourck@rbkc.gov.uk

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 689 (2022) authorised under delegated powers was served on all the parties whom the Council is statutorily required to notify and took effect on 25th August 2022.
- 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 tree planting if consent is granted for trees to be removed.
- 1.3 Tree Preservation Order 689 (2022) was made following the receipt by the City Council of six weeks’ notice of intention to remove one Lime tree (T1) from the side garden of 63 Warwick Avenue (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 Lime T1 is in the side garden of 63 Warwick Avenue. It is a prominent tree, clearly visible along a considerable length of Formosa Street and from Warwick Avenue. The lime tree is about 18m tall with a naturally oval canopy. It is considered to have a good form. The tree is a mature specimen and appears to be in good condition. It has a long-life expectancy.
- 1.5 The tree has been subject to previous crown reductions at different heights. There is an older reduction point at about 10m but more recently it has been reduced to points at about 16m height. It would be appropriate to manage it

by periodic crown reductions to the higher points in the future. Such management would not detract from its amenity value.

- 1.6 Lime trees are common in Westminster. 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.
- 1.7 The scale and form of the lime tree are such that they are in proportion with 63 Warwick Avenue and adjacent properties. Due to its location and history of pruning it has a comfortable relationship with the building. It is considered to make a positive contribution to the townscape and to be suitable in its location.
- 1.8 There is a second lime tree in the side garden of 63 Warwick Avenue, situated slightly further from the property than T1. The trees have a comfortable relationship and together form a prominent landscape feature. The loss of T1 would cause harm to the character and appearance of this part of the conservation area.
- 1.9 The tree is considered by the Council's Tree Section to have high amenity value and makes 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.
- 1.10 The initial reason given by the applicant for the proposed removal of the tree (T1) was:
 - The tree is causing subsidence damage to the Property
- 1.11 The evidence submitted with the s211 notice in support of the proposed removal of the Lime Tree (T1) consisted of:
 - Crack monitoring from 4/4/19 to 02/11/21
 - SP Szarek Designs Ltd Tech Report dated April 2020
 - Site Investigations report dated December 2021
 - Level monitoring from 14/12/21 to 10/05/22
 - Arboricultural Appraisal report dated 17/02/22

The evidence submitted did not include adequate level monitoring or an engineering appraisal report or estimated costs of repairs if the tree is removed or retained. In view of the limitations of the submitted evidence it was considered to be expedient in the interests of public amenity to make the TPO.

Subsequent to making the TPO the City Council received one objection

2 Objection from Agent on behalf of 63 Warwick Avenue

2.1 The Council's Legal Service received a letter dated 23 September 2022, from the Agent acting on behalf of the Owner of the Property objecting to the TPO on the grounds that:

- The lime tree T1 is directly implicated in root induced clay shrinkage subsidence damage to 63 Warwick Avenue, W9 2PR. The evidence confirms that the subject lime is a material cause of the subsidence damage.
- The lime T1 is too close to the affected building for pruning to offer a viable long-term solution in abating its influence. If the tree is retained, even with pruning, further damage is inevitable at some point in the future.
- The alternative to tree removal is underpinning, the costs of which will be recovered from the Council if it decides to prevent the removal of T1.

The letter included the following evidence in addition to that previously submitted with the s211 notice:

- Gryphon Crack and Level Monitoring dated 14.12.21 - 11.07.22
- Photos of reappearing cracks dated 30.08.22
- Pyle Letter (Tech Report) dated 11.01.22
- Pyle Letter (Addendum Tech Report) dated 31.08.22
- Pyle Consulting Repair Costs dated 14.09.22

3 Objection Response

3.1 The City Council's Arboricultural Officer responded to the objection by letter dated 23 September 2022. The Officer considered the submitted evidence and stated the following conclusions: -

- There is current damage to the Property which consists of internal and external cracking to the front elevation and right-hand side.
- Test pit 1 (TP1) was excavated at the rear of the right-hand side extension. The test pit exposed the foundations, which were observed to be 1m below ground level at the point of the excavation and 2m below the ground level of the bed where T1 and the second lime (T4) are growing. No soil analysis or root identifications were carried out in relation to TP1.
- Boreholes 1-3 (BH1-3) were excavated in the planting bed where T1 and T4 are growing to depths of 3m, which is 1m below the foundation depth. The soil in the boreholes was found to be shrinkable clay and there is some evidence

of desiccation below the foundations. Roots identified as Tilia sp, which is lime, were found to depths of 3m.

- Level monitoring shows pronounced seasonal movement of the right-hand side of the property, which is indicative that the movement is caused by abstraction of water from clay soil by vegetation.
- The submitted evidence implicates T1 (in addition to T4) in the damage to 63 Warwick Avenue.
- The Officer noted that the agent has made a TPO application to remove T1 and has submitted the same evidence with that application.

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. 689 (2022) with or without modification with permanent effect.; OR

(b) NOT TO CONFIRM Tree Preservation Order No. 689 (2022).

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT ISAAC CARTER, LEGAL SERVICES (Email lcarter@westminster.gov.uk) OR GEORGIA HEUDEBOURCK, LEGAL SERVICES ON 07790979410 (Email Georgia.heudebourck@rbkc.gov.uk)

Local Government (Access to Information) Act 1985

Background Papers

1. Copy of Provisional TPO 689 (2022)
2. Photographs of T1
3. Objection letter from MWA Arboriculture dated 23rd September 2022 and attached technical evidence
4. Response letter from the City Council's Arboricultural Officer to objector dated 21 November 2022
5. Report of Council's Arboricultural Officer dated 18 August 2022 recommending making of the Provisional Order