

PLANNING COMMITTEE – Date: 25 April 2018

**Report of the Assistant Director of Environment, Housing and Regeneration
Directorate**

Ref: TPO 2017/18	WARD: Cheam
------------------	-------------

6 Peaches Close, Cheam, SM2 7BJ

To confirm the provisional Tree Preservation Order (TPO) 2017/18 protecting one black pine tree (T1). The tree is located within a raised planter on land to the rear within the curtilage of 6 Peaches Close.

Recommendation:

It is recommended that Tree Preservation Order 2017/18 be formally confirmed without modifications.

Reason for report to Committee – To decide whether to confirm a provisional Tree Preservation Order where one or more objections have been received.

Summary:

The tree subject to provisional protection under Tree Preservation Order (TPO) 2017/18 is considered worthy of continued protection for the following reasons:

- The preservation of the pine tree is considered expedient in the interests of amenity.
- Having been assessed for health, longevity, and visibility the tree is considered suitable to be protected by TPO.
- The presences of the trees wide canopy provides a significant green screening which also forms a link between the Urban Green Space to the west and the Green Corridor to the north. The canopy softens the surrounding built form providing a verdant focal point within the surrounding landscape. The preservation of the black pine (T1) is desirable in the interests of the current and future public visual amenity value of the immediate and surrounding area.

1.0 BACKGROUND

- 1.1 As part of a previous review of Tree Preservation orders, an audit carried out in 2005/6 identified the black pine tree (T1) to the rear of 6 Peaches Close as being worthy of retention. A Tree Preservation Order (TPO) was provisionally made on 3 November 2006. Following a further review of all TPO's which commenced in early 2015, as part of the programmed TPO audit, concerns were raised in respect of Order TPO2006/11 which placed protected status of the pine tree (T1) at potential risk. As such, it was decided that in order to remove any reasonable doubt about the continued protection given by TPO2006/11, a new Order would be served to ensure the continued protection of the tree in question. As such a provisional TPO 2017/18 was made on 29 November 2017 under the Town and Country Planning (Tree Preservation) (England) Regulations 2012 which requires the Council to confirm the

Order within six months of the Order being served. The six months will lapse and the pine (T1) will no longer be protected by an Order on 28th May 2018 unless it is confirmed by that date.

- 1.2 The Council received an objection to the Order 2017/18 in an email dated 1 December 2017 from the owner of the property which means that the decision to confirm the order has to be taken by Planning Committee.
- 1.3 The tree in question (T1) is located in a raised planter on land to the rear of 6 Peaches Close. The tree is fully visible from the public highway of Old Barn Close and significant parts of the trees canopy and main stem can be viewed from the junction of Station Way and Peaches Close, junction of Upper Mulgrave Road and Station Way.
- 1.4 **Relevant Planning History:**
- 1.5 In 2006, the Council Tree Evaluation Method for Preservation Orders (TEMPO) criteria which estimated the tree 'remaining longevity (in years) & suitability for a TPO at 20-40 years. The assessment also noted that T1 to be a 'medium size tree clearly visible from Peaches Close' and that there was a 'known threat to tree' of imminent danger of felling. The final TEMPO score in 2006 was 17 'definitely merits a TPO' and this contributed towards the officer recommendation to make the provisional Order. The Council duly protected the tree within an Order Number 2006/11 in 2006.

2.0 TPO PROPOSALS

- 2.1 Details of Proposal: As stated above due to concerns over the level of protection afforded by the original TPO 2006/11, it was considered expedient that a new Tree Preservation Order 2017/18 be served. This order was served on 29th November 2017 in line with the provisions of Section 198(1) of the Town and Country Planning Act (1990) (as amended).
- 2.2 Representations and objections made against TPO 2017/18 are considered valid grounds for objection, however it should be noted that the main reasons for objection centre on the public visual amenity value of the tree and the possibility that branches with weak unions increase the risk of failure within these branches.
- 2.3 Given that an objection has been received to TPO 2017/18, officers are seeking authority to confirm the provisional Tree Preservation Order which expires on the 28 May 2018 in order to continue the protection of the pine (T1).

3.0 PUBLICITY

- 3.1 Notification was carried out in line with the provisions under Section 198(1) of the Town and Country Planning Act 1990 (as amended) and the Council's Statement of Community Involvement by way of letters served on the immediate adjoining properties.
- 3.2 In response to the making of the provisional order, representations have been received from the owner of 6 Peaches Close objecting to the confirmation of the order including an email dated 1 December 2017.

3.3 **LEGISLATIVE AND PLANNING POLICY CONSIDERATIONS**

3.4 Town and Country Planning Act 1990 (as amended), Town & Country Planning (Tree Preservation) (England) Regulations 2012 and associated planning practice guidance notes.

3.5 Under section 198, 199, and 201 of the above Regulations, the Local Planning Authority has the power to make Tree Preservation Orders:

- Where there is a concern for the natural environment.
- To ensure that trees are not unnecessarily lost.
- To ensure that adequate tree coverage is maintained and
- To encourage the retention of healthy trees with public amenity value.

3.6 Section 198(1) of The Town and Country Planning Act (1990) states that 'If it appears to a Local Planning Authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order'.

3.7 Policy 28 Character and Design of the adopted Local Plan states the importance of respecting existing local landscape and streetscape character of the varied areas within the Borough. This includes protecting and respecting the existing trees, hedges, landscape features, landforms and other natural features within the area.

3.8 **Public Sector Equality Duty (PSED) and Human Rights:**

3.9 Under the Equalities Act 2010 the Council must have due regard to the need to eliminate discrimination, harassment or victimisation of persons by reason of age, disability, pregnancy, race, religion, sex and sexual orientation. This planning application has been processed and assessed with due regard to the PSED. The application proposals are not considered to conflict with the Duty.

3.10 The application has also been considered in the light of the Human Rights Act 1998 and it is considered that the analysis of the issues in this case, as set out in this report and recommendation below, is compatible with the Act.

4.0 **PLANNING CONSIDERATIONS**

4.1 The principal considerations (including whether any material planning objections have been reasonably addressed) in relation to this preservation order are:

- Title of the Tree Preservation Order
- Health and condition of the trees and likelihood of remaining longevity
- Relative public visibility

4.2 **Title of the Tree Preservation Order**

4.3 Within the Town & Country Planning (Tree Preservation) (England) Regulations 2012, it states that the Plan that forms part of Schedule One of the Order takes precedent. The Council consider that the Plan with the Order complies with the legislation and regulations in that it clearly shows which tree the Council intended to protect within the Order TPO 2017/18. The owner of the property has challenged the authenticity of the order in that it does not properly identify the land/tree in question

but it is considered that this objection cannot be sustained based on the relevant Regulations (as above).

4.4 Health and Condition of the trees and likelihood of remaining longevity:

4.5 In terms of tree health and condition, T1 (pine) is in good health, free from significant defects or disease. It displays no obvious or significant structural inadequacies which would present the tree as a foreseeable risk. In their objection, the owner of the property has raised concerns that the tree has structural defects arising from previous storm damage from the Great Storm of 1987. However, the assessment of the Council's expert tree officers is that if the damage to the pine tree was 'severe' at the time of the Great Storm the tree would no longer be *in situ*. It is therefore considered that as the pine tree is still *in situ* it is considered on the balance of probability that if there was any damage caused it was only short term. In addition, there have been a number of extreme weather events since the Great Storm 1987 (which was one in hundred year event). There is no evidence of recent branch failures within the canopy or the main stem of the tree. The canopies of trees are symmetrical due to prevailing winds being from one direction. When a tree has an unbalanced canopy form this does not automatically make it hazardous or an increased risk of partial or whole tree failure. The current unbalance form of the tree does not significantly increase the hazard and risk the pine has to people or property.

4.6 Relative Public Visibility:

4.7 The pine (T1) makes a positive contribution to the visual amenity of the area as it can be seen from Old Barn Close, and significant parts of the tree can be also be viewed from the junction of Station Way and Peaches Close, junction of Upper Mulgrave Road and Station Way.

4.8 Tree Evaluation Method for Preservation Orders (TEMPO) criteria

4.9 As part of its assessment, officers have evaluated the contribution of the tree to public amenity using methodologies that include the Tree Evaluation Method for Preservation Orders (TEMPO) criteria authorised by Julian Forbes-Laird in 2002 which is an 'industry standard of assessment used by over 60 local authorities and private consultancy. A TEMPO assessment of the pine (T1) has been undertaken by and on behalf of the Council independent of each other. The TEMPO scores for the pine are as follows;

- 2006 Mr. Mark Cannon (Principal Tree Officer) **17** Definitely merits a TPO
- 2017 Mr. Nick Beardmore (Arboricultural Consultant) **13** TPO Defensible 'justified'
- 2018 Mr Callum Henderson (Principal Tree Officer) **21** Definitely merits a TPO

4.10 It is clear when the pine (T1) is assessed by an Arboriculturist using recognised assessment criteria, that the tree should be protected within an Order given that the tree provides a significant amount of public visual amenity value to the immediate and surrounding area. The only significant difference between the three TEMPO scores undertaken by the Arboriculturist is the 'Other Factors'. Within this section two Arboriculturist have scored the pine 1 'Trees with none of the above additional redeeming features (Inc. those of indifferent form). However, Callum Henderson has scored a four in this section 'Members of groups of trees that are important for their cohesion' Members of groups of trees that are important for their cohesion'. This, is due there being other pine trees that are protected within Orders in around Old Barn Close. These pine trees along with other species of trees form a cohesive group of

trees that are indicative of the verdant and arboreal landscape character of the area. That form is an important linkage between the adjoining Urban Green Space to the west and the Green Corridor along the rail track to the north.

- 4.11 In addition to a TEMPO assessment of the pine (T1) the Principal Tree Officer undertook an assessment in accordance with BS5837:2012 'Trees in Relation to Design, Demolition and Construction – Recommendations' (BS5837:2012). On the basis of this assessment it is his considered opinion that the black pine (T1) is a Category B1 and 3 which are 'Trees of moderate quality with an estimated remaining life expectancy of at least 20 years.' The tree was downgraded from a Category A tree given there are small of minor impairments within the tree. However, given the trees arboricultural and cultural values this tree warrants protection within an Order.
- 4.12 In addition to the TEMPO and BS5837:2012 assessment made by Mark Cannon, Nick Beardmore and Callum Henderson, it was also the reasoned considered opinion of the Councils previous Principal Tree Officer in 2017 that the pine (T1) should be protected by Order TPO2017/18. Therefore, there are four Arboriculturist of the opinion that the tree is of satisfactory physiological health and structural conditions to be suitable for protection. That the tree provides a significant amount of public visual amenity value to the immediate and surrounding area. The objector to the Order TPO2017/18 has not provided the Council an opinion from an Arboriculturist in support of their objections to confirmation of the Order.
- 4.13 **Summary of tree suitability for protection:**
- 4.14 The proposal to protect the pine tree is considered to be acceptable and in accordance with the relevant legislation and planning practice guidance as the tree meets the TEMPO suitability requirements for health, longevity and relative visibility.
- 4.15 **Consideration of Central Government Guidance**
- 4.16 This can be found within The Ministry of Housing, Communities & Local Government [MHCLG] website: <https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas> Published 6 March 2014. Paragraph: 007 Reference ID: 36-007-20140306. The paragraph 7 makes reference 'amenity' within the context of protecting trees within TPO's. It is the considered opinion that the removal of pine (T1) 'would have a significant negative impact on the local environment and its enjoyment by the public'. Given the tree can be viewed and enjoyed from a number of viewpoints locally. The removal of pine (T1) would have a harmful impact on the amenity of the immediate and surrounding area. In order to protect the landscape character from the loss of this amenity it is expedient for the Council to protect T1 by an Order.

5.0 **CONCLUSION AND RECOMMENDATION**

- 5.1 The tree subject to provisional protection under Tree Preservation Order (TPO) 2017/18 is considered worthy of continued protection for the following reasons:
- The preservation of the pine tree is considered expedient in the interests of amenity.
 - Having been assessed for health, longevity, and visibility the tree is considered suitable to be protected by TPO.
 - The presents of the trees wide canopy provides a significant green screening which also forms a link between the Urban Green Space to the west and the Green Corridor to the north. The canopy softens the surrounding built form

providing a verdant focal point within the surrounding landscape. The preservation of the black pine (T1) is desirable in the interests of the current and future public visual amenity value of the immediate and surrounding area.

5.2 It is therefore recommended that the Tree Preservation Order be confirmed.

6.0 **BACKGROUND PAPERS**

Appendix 1 - Order

Appendix 2 - Schedule

Appendix 3 - TEMPO MC

Appendix 4 - Tree Report & TEMPO NB

Appendix 5 - TEMPO CH

Appendix 6 - Objection Email