


<p style="text-align: center;">Non-Executive Report of the:</p> <p style="text-align: center;">Development Committee</p> <p style="text-align: center;">12 June 2024</p>	
<p>Report of: Corporate Director for Housing and Regeneration</p>	<p>Classification: Issue Exemption Class Title</p>
<p>Issue Title: Confirmation of the Dinmont Estate E2 Tree Preservation Order 2024/2</p>	

Executive summary

This report recommends that the council confirm a Tree Preservation Order (TPO) on two trees located at the Dinmont Estate. Officers served an interim TPO to protect the two trees under delegated powers in February 2024 (see appendix 1). The effect of the order makes it an offence to cut down, top, lop, uproot, wilfully damage or wilfully destroy the trees without the council’s permission. The order will last for six months unless it is confirmed by the council.

Following a period of statutory consultation, the owner of the land on which the trees are located objected to the order. Having considered this objection, the officers have concluded that it remains expedient in the interests of amenity to protect the trees and recommend that that TPO is confirmed to provide long-term protection. The landowner was advised of this recommendation, and the reasons for it, and has stated that they wish to sustain their objection. Under the council’s constitution, where there is a sustained objection to an interim TPO, the decision to confirm the TPO should be taken by Development Committee. The report sets out in detail the reasons for making the interim order, the nature of the landowner’s objection and officer’s assessment of this.

Recommendations:

The Development Committee is recommended to:

1. Note the objection to the protection of the trees at Dinmont Estate.
2. Confirm the Dinmont Estate Tree Preservation Order 2024/2 to protect the significant amenity value which these trees offer.

1. REASONS FOR THE DECISIONS

- 1.1. The two trees identified by the interim TPO have a high degree of public visibility and offer significant amenity value to the local area. Without protection the trees may be removed or otherwise harmed. Consequently, it is considered expedient to continue to protect the trees by confirming the TPO.

2. ALTERNATIVE OPTIONS

- 2.1. Development Committee may decide not to confirm the order. In this case the interim order will be revoked and the trees would no longer have statutory protection.
- 2.2. Development Committee may decide to confirm the order with an amendment, by omitting one of the trees from the order and leaving only one protected.

3. DETAILS OF THE REPORT

Legislative framework

- 3.1. Under section 198 of the Town and Country Planning Act 1990 (as amended) a Local Planning Authority (LPA) can make a tree preservation order in its area where it appears that: a) the preservation of particular trees or woodlands is desirable in the interests of amenity; and b) it is expedient to preserve the trees or woodland by making a TPO. The act does not define the term 'amenity' but the government's Planning Practice guidance states that orders should be used to protect trees if their removal would have a significant negative impact in the local environment and its enjoyment by the public (Paragraph: 007 Reference ID: 36-007-20140306). Before an LPA makes or confirms an order, they should be able to show that protection would bring a reasonable degree of public benefit in the present or in future.
- 3.2. Government guidance also states that it may be expedient to make an order if the LPA believes there is a risk of trees being felled, pruned or damaged in

ways which would have a significant impact on the amenity of the area. However, it is not necessary for there to be immediate risk for there to be a need to protect trees. It may be expedient to make an order if the council considers trees to be at risk because of development pressures.

- 3.3. The procedure for making and confirming orders is set out in the Town and Country Planning (Tree Preservation) (England) Regulations 2012. These state that, once made, an order takes effect provisionally for six months, during which time the LPA must decide whether to provide long-term protection by confirming it. Orders that are not confirmed within six months lapse and the trees are no longer protected.
- 3.4. The above regulations require the council to serve notice of the order on any 'persons interested in the land affected by the order', which in practice means every owner and occupier of the land and every other person whom the LPA knows to be entitled to cut down, lop or top any of the trees to which the order relate. The regulations also require the council to give such persons at least 28 days to make any objection or representation to the provisional order. The LPA cannot confirm an order until it has first considered any such objections or representations. Under the terms of the council's constitution (Part B, Section 19 Terms of Reference – Council's and Committees) Development Committee will consider recommendations to confirm a TPO where there is a sustained objection. This is defined as one that is maintained despite attempts to resolve it, or is one that is considered incapable of resolution by negotiation.

Background to making the TPO

- 3.5. The trees are located on the Dinmont Estate, which is to the north of Hackney Road between Goldsmith Row and Pritchard's Road. The trees are respectively a London plane, referred to as T1 (figure 1), and a Whitebeam, referred to as T2 (figure 2). They are within a grassed amenity area, adjacent to Teale Street, between Seabright House and Beechwood House (figure 3).



Figure 1: London plane (T1) viewed from Teale Street



Figure 1: Whitebeam (T2) viewed from Teale Street

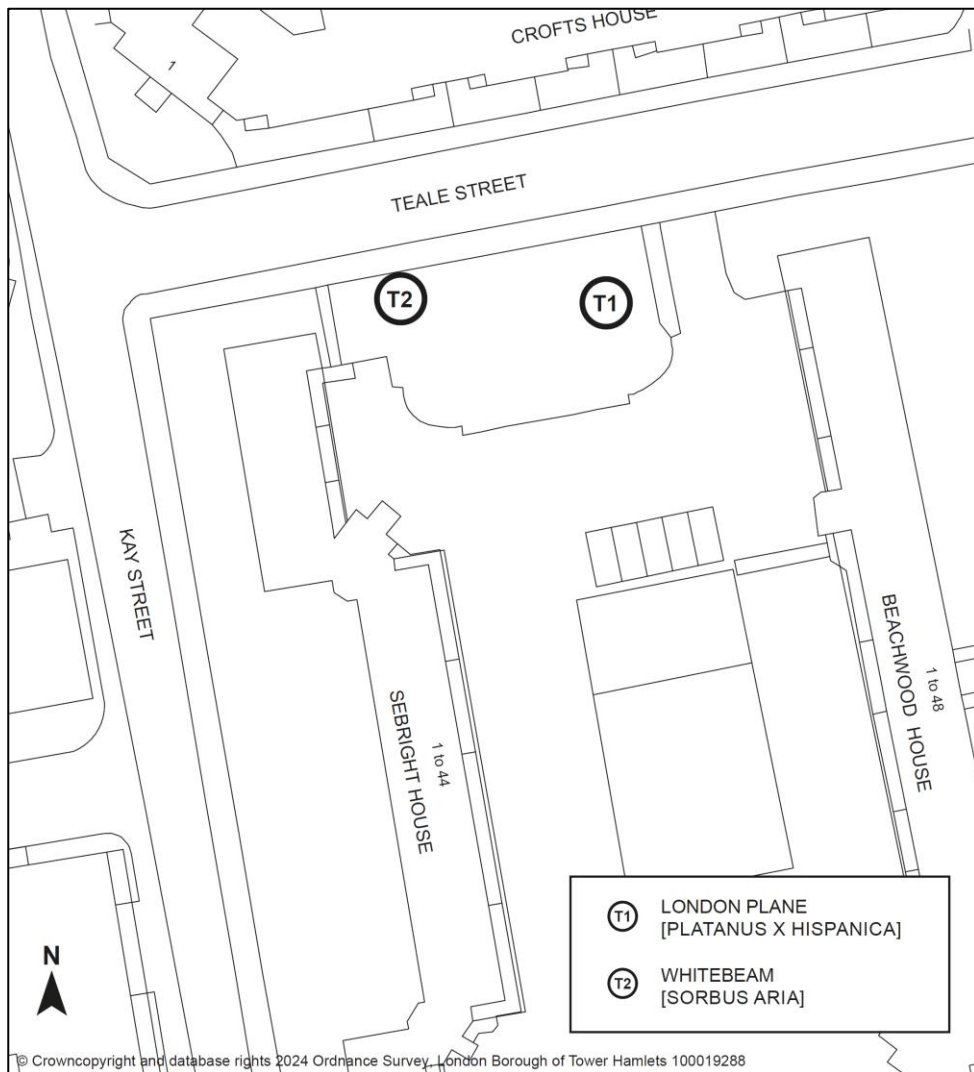


Figure 3: Location of the trees

- 3.6. Officers were first alerted to the potential amenity value of the trees when Tower Hamlets Community Housing (THCH), the owners of the estate, began consulting about possible development on estate land. A council arboricultural officer visited the site on 26 June 2023 and evaluated the trees using a TEMPO (Tree Evaluation Method for Preservation Orders) assessment. This is an objective assessment of the value of a tree that determines whether it warrants protection. Trees are given a score out of 25, with a score of 11 or more meaning the tree merits protection. In this instance the London plane was given a score of 18 and the whitebeam a score of 17 (see appendix 2). Both trees were assessed as being mature and in good health, contributing significantly to the amenity of the adjacent Teale Street. It was noted that the trees are highly visible from the public highway sited on open space to the rear of the fence line in the courtyard space between Seabright House and Beechwood House. In view of the tree's significant amenity value and the concerns around the potential redevelopment of the estate and the vulnerability of the trees if this were to happen, it was considered expedient to make a TPO. The order was made on 27 July 2023 and the THCH were served notice of the order. THCH raised an objection to the TPO via their planning agents, Savills. This objection, and the council's response, are considered in detail below.
- 3.7. Officers wrote to the THCH to advise that their objection had been given due consideration, but that officers remained of the view that the trees should be given long-term protection. The landowner advised that they wished to sustain their objection and they were subsequently advised that the matter would be referred to Development Committee for a decision. However, it was not possible to bring the matter to Development Committee within six months of the date that the TPO was made, and it subsequently lapsed.
- 3.8. The council's arboricultural officer visited the site again on 24 January 2024 to re-assess the two trees. On this occasion, the London plane was awarded a TEMPO score of 16 and the whitebeam a score of 14 (see appendix 2). As before, it was concluded that both trees were mature and in good health, contributing significantly to the amenity of the adjacent Teale

Street. It was noted that the trees are highly visible from the public highway sited on open space to the rear of the fence line in the courtyard space between Seabright House and Beechwood House. Although they were given a lower score than the previous assessment, it was concluded that overall, the trees have significant amenity value, which, along with concerns around the potential redevelopment of the estate, and the vulnerability of the trees if this were to happen, meant that it would be expedient to serve a new TPO.

- 3.9. A new interim TPO was made on 1 February 2024. THCH were served noticed and they subsequently advised, via their planning agents, that they wished to carry forward their objection to the previous TPO.

The objection

- 3.10. Savills (UK) Ltd acting as planning agent for THCH have submitted an objection to the TPO and a copy is available as a background paper for inspection. The planning agent argues that, in this instance, the protection of the trees is not considered to be expedient or in the interests of amenity and as such fails the two statutory tests.
- 3.11. Regarding expediency, the objection notes that, whilst the site has been discussed in pre-application meetings since 2021, it is only in the most recent advice in June 2023 that concern has been expressed over the removal of trees. Two previous letters did not provide any advice in relation to trees, and the third did not expressly object to their removal but did identify the potential for tree replacement to mitigate against the impact of this. The objection states that the removal of the trees can be adequately mitigated through replacement planting, as set out in the pre-application proposals, details of which are appended to the objection. In addition, it is noted that the replacement planting proposed offers the opportunity for biodiversity and ecological improvements, as well as softening and greening of the courtyard area. Since this additional planting could be controlled by the council by planning conditions, it is not considered expedient to protect the trees with a TPO.

- 3.12. The objection goes on to note that ‘amenity’ is not defined in law, but that planning authorities are advised to assess the amenity value of trees in a structured and considered way. This includes considering the visibility of the trees, their individual, collective and wider impact, as well as other factors such as nature conservation and response to climate change.
- 3.13. The objection states that the amenity value of the trees was independently assessed by a tree consultancy. That assessment found that only one of the trees is of high quality (T1) whilst the other (T2) is of only moderate quality.
- 3.14. The objection states that the two trees are grouped together with limited justification of the amenity value, noting that public visibility alone is not sufficient to warrant protection. The council has stated that the trees offer relief within the predominantly hard landscaped courtyard. The objection states that such relief could also be provided by a robust tree planting strategy will deliver the same or enhanced canopy cover in the estate. It also notes that the two trees are not within the green grid or the new green grid buffer zone.
- 3.15. The objection also highlights planning policies relating to the planting of replacement trees, where they are removed to facilitate development. Planning policies supporting the delivery of affordable housing, especially in the City Fringe Opportunity Area where the site is located, are also highlighted.

Consideration of the objection

- 3.16. The objection was referred to the council’s arboricultural officer who disagrees that it is not expedient to protect these trees with a TPO. This is because there is a clear and foreseeable threat to these trees, evidenced by the ongoing pre-application discussions in which the removal of the trees is proposed.
- 3.17. The arboricultural officer points out that the effectiveness of a TPO goes beyond the development management process (where the retention or

removal of trees is discussed and agreed in accordance with BS 5837) and extends to other circumstances. For example, a TPO would ensure the ongoing protection of the trees if planning proposals were withdrawn. A TPO would also continue to protect trees where development has taken place and one or both trees have been retained. It is foreseeable that, even if development which retained the trees took place, this would place them under continued pressure and their retention would remain under threat.

- 3.18. The arboricultural officer also states that it is not unusual for trees that are subject to planning proposals to be protected by a TPO. The purpose of a TPO is identify and protect trees with significant amenity value. The fact that a tree is protected by an order does not necessarily mean that it cannot be removed to allow development to take place. The value of trees, and their contribution to amenity, is a material planning consideration and will always be taken into account when determining a planning application, whether or not they are subject to a TPO. The presence of a TPO highlights the importance of a tree in development management decision making and, as set out above, also provides protection outside of this process.
- 3.19. Regarding the objection on the grounds of a lack of amenity, as noted above, both trees were objectively assessed by the council using a tree evaluation method for preservation orders (TEMPO). The assessment gives the trees scores against a range of factors, the scores translate to a degree of suitability for a TPO in relation to each amenity factor. In terms of their physical condition, anticipated remaining lifespan and degree of public visibility, both trees were assessed as being either 'suitable', 'very suitable' or 'highly suitable' for protection. Both trees were not considered to have any additional redeeming features which would mean that any other factors should be considered, such as being a veteran tree, being part of an important group or having historic, commemorative or habitat importance. Nonetheless, the trees scored highly enough against the other factors to mean that their amenity value is sufficient to merit protection by a TPO.
- 3.20. As noted above, the trees were re-assessed before issuing the second TPO. The amenity value of the trees was assessed as being slightly lower in this

second assessment compared to the first. T1 was reassessed as being a 'large', as opposed to 'very large' tree, which is clearly visible from the public highway. The retention span of T2 was reassessed as being between 20 and 40 years and as opposed to 40 to 100 years. Notwithstanding the lower amenity score resulting from this, both trees are still considered to be suitable for protection with a TPO.

4. EQUALITIES IMPLICATIONS

- 4.1. In determining whether to confirm, amend or revoke this TPO the council is required to have regard to the provisions of the public sector equality duty, that came into force in April 2011.
- 4.2. This means the council must, in summary, have due regard to three aims of the general equality duty, that is they must ensure that proposed actions:
 - Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.
 - Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - Foster good relations between people who share a protected characteristic and those who do not.
- 4.3. The Equality Act 2010 explains that the second aim (advancing equality of opportunity) involves having due regard to the need to:
 - Remove or minimise disadvantages suffered by people due to their protected characteristics.
 - Take steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people.
 - Encourage people with certain protected characteristics to participate in public life or in other activities where their participation is disproportionately low.

- 4.4. Officers have considered the impacts this TPO has on people with protected characteristics and consider that there would be no adverse impacts on people sharing these characteristics. Protection of these two trees' amenity value will benefit everyone equally and would not result in discrimination or disadvantage due to protected characteristics.

5. **OTHER STATUTORY IMPLICATIONS**

- 5.1. There are no other statutory implications.

6. **COMMENTS OF LEGAL SERVICES**

- 6.1. Regulation 7 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 states:

“7. Procedure for confirmation of a tree preservation order

The authority shall not confirm an order which they have made unless they have first considered objections and representations duly made in respect of it and not withdrawn.

(2) An authority may confirm an order with or without modifications.

(3) Where an order is confirmed it shall be endorsed to that effect and the endorsement shall also indicate—

(a) that the order was confirmed with modifications or without modifications, as the case may be; and

(b) the date on which it was confirmed”

- 6.2. It is for the Development Committee to decide on the basis of the information in this report and the presentation at committee whether it wishes to either:

- a) Confirm the order (ie. in respect of TPOs on both T1 and T2);
 - b) Confirm the order with modifications (ie. in respect of either T1 only or T2 only); or
 - c) Not confirm the order (in which case the provisional TPO will lapse)
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Linked Reports, Appendices and Background Documents

Linked Report

NONE

Appendices

Appendix 1: Interim TPO dated 1 February 2024

Appendix 2: TEMPO assessment dated 26 June 2023

Appendix 3: TEMPO assessment dated January 2024

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- Delegated report recommending serving an interim TPO on two trees at the Dinmont Estate E2
- Letter of objection and appendices dated 23 September 2023

Officer contact details for documents:

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