

PLANNING AND DEVELOPMENT CONTROL COMMITTEE
5th MARCH 2024

SUBJECT:

CONFIRMATION OF TREE PRESERVATION ORDER T439/11/23

LAND AT HYDE MEWS, DALLING ROAD, W6

WARD/S:

RAVENSCOURT

OFFICER:

ADAM O'NEILL, PRINCIPAL URBAN DESIGN & HERITAGE OFFICER

RECOMMENDATION:

The Committee resolve that the Tree Preservation Order T439/11/23 be confirmed without modification.

CONFIRMATION OF TREE PRESERVATION ORDER T439/11/23
LAND AT HYDE MEWS, DALLING ROAD, W6

1 DOCUMENTATION

1.1 TPO location plan. Photograph of the trees taken from Dalling Road.

2 BACKGROUND

2.1 On 15th November 2023 delegated authority was given to make a Tree Preservation Order (TPO) at Hyde Mews, Dalling Road. The TPO includes one Lime tree (T1) and one Himalayan Birch (T2), as shown on the enclosed TPO location plan. The Order was made under Section 201 of the Town and Country Planning Act 1990 and became effective for a period of six months from 17th November 2023.

2.2 The Order was made following the receipt by the Council of Conservation Area tree works notice 2023/02479/TREE to fell the Lime tree (T1). Officers also received a number of requests from local residents to protect the tree.

2.3 The trees are visible from the public highway in Dalling Road.

2.4 Under the Tree Regulations the Council is obliged to consider representations to the Order, made within 28 days of its service before confirming it. In this case the consultation period was extended to provide more time for representations to be made. Representations have been received from the agent of the owner of 2 Hyde Mews and a resident at 5 Wingate Road.

2.5 Policy OS5 of the Council's Local Plan (2018) states that:

'The council will seek to enhance biodiversity and green infrastructure in the borough by:

- a. maximising the provision of gardens, garden space and soft landscaping, seeking green or brown roofs and other planting as part of new development;*
- b. protecting back, front and side gardens from new development and encouraging planting in both back and front gardens;*
- c. seeking to prevent removal or mutilation of protected trees;*
- d. seeking retention of existing trees and provision of new trees on development sites; and*
- e. adding to the greening of streets and the public realm.'*

3 CONSULTATION RESPONSES TO THE ORDER

3.1 Email dated 29th January 2024 from agent on behalf of the owner of 2 Hyde Mews, Dalling Road

This representation raised an objection to the confirmation of the Provisional TPO in relation to tree T1:

- *“We wish to formally object to the provisional tree preservation order T439/11/23 being made permanent to the Lime Tree referenced on the map attached with the order as T1. We have no objection to a permanent tree preservation order to the Himalayan Birch referenced on this same map as T2.*
- *The basis of this objection in relation to Lime Tree T1 is outlined as follows:*
 - *Lime Tree T1 is within the demise of 1 Hyde Mews however the strip of land where the tree has been planted is under the ownership of the legal owner of 2 Hyde Mews as per the Right of Way Survey Plan 2 undertaken by David J. Powell Surveys Limited experts in boundary disputes and demarcation.*
 - *The legal owner of 2 Hyde Mews instructed the boundary survey in response to a challenge by the director of Optima Properties the legal owner of 1 Hyde Mews, to the width dimensions of the legal right of access across 1 Hyde Mews. This was primarily to suggest that the access for construction vehicles to undertake the development works detailed in Planning Permission 2020/00556/FUL could not be achieved due to the width restrictions of the right of access.*
 - *It was also meant as a point of negotiation to persuade the legal owner of 2 Hyde Mews to rent 1 Hyde Mews to enable the construction phase works to proceed. If this was not agreed, then the owner of 1 Hyde Mews would erect a fence on the right of access as a point of demarcation of the available width which at the time was disputed between the partes [sic]. This would then prevent construction vehicles using the right of access as Lime Tree T1 would obstruct use of the full width of the right of access to include the section of private land owned by 2 Hyde Mews.*
 - *To avoid a boundary dispute which will be dealt with at a later date, the rental of 1 Hyde Mews including unrestricted use of the garden demise was negotiated for a period of 80 weeks at the full market rent from 05 August 2023.*
 - *For this reason, the provisional tree preservation order has no impact on the construction phase of the works which is scheduled to complete within the lease term. However, regardless of the construction works. the owner of 2 Hyde Mews has easement rights to the uninterrupted right of access with or without a vehicle to his property across 1 Hyde Mews as per the attached Title Deed.*
 - *It is for this reason that [name redacted] Planning Officer and [name redacted] Arboricultural [sic] Officer attended Hyde Mews on Thursday 07 September 2023 to inspect the width of the right of access which had been marked out with string by the owner of 1 Hyde Mews. A vehicle was made available during the visit, and it was clear that this could not be driven across the right of access to enter 2 Hyde Mews without accessing the private land. This would have resulted in a collision with T1 Lime Tree which was obstructing the access route and is therefore a breach of the easement right awarded in the Title Deed.*

- If the obstacle to uninterrupted access of the right of way was not permanently fixed and could be moved out of position for the purpose of accessing 2 Hyde Mews, then it would be deemed reasonable for this to be maintained as per the Right of Access Act. However, T1 Lime Tree is clearly fixed by its roots and is significant in height and volume which is the basis of the application for this to be removed to protect the legal right of uninterrupted access across 1 Hyde Mews with or without a vehicle as defined by the Title Deed.

- In summary, it is hoped that this representation clearly demonstrates that the removal of Lime Tree T1 is only proposed as the basis to uphold the easement right to the uninterrupted right of access to 2 Hyde Mews across 1 Hyde Mews within the hatched area noted in the boundary survey. For a vehicle to use this right of access without interruption it will be necessary to drive over the private land marked in red on the boundary survey which as previously demonstrated is currently permanently obstructed by Lime tree T1.”*

3.2 Email dated 3rd December 2023 from resident of 5 Wingate Road

This representation supported the confirmation of the Provisional TPO on both trees:

- “I am writing in support of this TPO remaining in force in relation to both trees. Both trees are close to and visible from Dalling Road; the Himalayan birch particularly so. However the lime tree is also visible over the gates to Hyde Mews. Both trees contribute positively to the amenity of the neighbourhood. The trees are in a conservation area and very close to the border of another conservation area. Trees contribute positively to the built environment of a city and should not be felled or damaged if at all possible. Dalling Road is a road with heavy pedestrian traffic close to a school and the trees are seen and enjoyed by hundreds of people very day. The Himalayan birch is in a crucial position at a bend in Dalling Road, and is particularly visible for that reason, and has very attractive trunks.*
- As you are aware the demolition and rebuilding of number 2 Hyde Mews has planning permission and is due to commence imminently. I attach a copy of letter recently circulated to neighbours confirming demolition will commence on 4 December 2023. I am concerned that skip lorries entering the site will potentially damage the Himalayan birch.*
- I attach 2 photos of the entrance to Hyde Mews taken on 22 November 2023, evidencing the state of condition of the Himalayan birch prior to works starting. I also attach a further photograph taken on 3 December 2023 from the other side of Dalling Road showing the lime tree in the background (without leaves). Please note that the current gates are temporary and slightly over 2.6m high. Once the original gates are restored, which are around 2m high, the trees will be more visible.*
- Given the significant works taking place at number 2 Hyde Mews and to protect the amenity of the locality I urge that the TPO is confirmed.”*

3.3 Officer's comment

Under s.198 of the Town and Country Planning Act 1990 Local Planning Authorities have the power to make provision for the preservation of trees in their area if it is considered expedient in the interests of amenity.

The trees are some of the largest in the immediate vicinity and are visible from the public highway in Dalling Road. The trees have significant amenity value, provide a green foil to

the surrounding development and make a positive contribution to the character and appearance of the Conservation Area.

The development at 2 Hyde Mews currently under construction was approved under 2020/00556/FUL and is subject to condition 3 requiring any tree works and tree protection measures necessary in relation to the implementation of the approved development to be set out in an Arboricultural Impact Assessment (AIA) to be approved by the Council. The AIA was submitted under 2023/01972/DET, no major defects were identified to tree T1 and it was estimated to have a significant remaining life expectancy. The AIA was assessed by the Council's Arboricultural Officer who was satisfied with the submitted details and the condition was discharged. Some minor tree works were carried out to the Himalayan Birch (T2) as per the approved details. The purpose of making the Provisional Tree Preservation Order was to control works to the trees in the longer term, any impacts in relation to the approved development can be controlled through condition 3 on the planning permission.

The owner's agent has explained that the presence of the trees is not an impediment to the implementation of the planning permission due to the arrangements that have been made to lease 1 Hyde Mews for the duration of the construction works and sufficient access is available for construction traffic. These matters have also been fully considered as part of the planning application process.

In the longer term, the width of the vehicular access to 2 Hyde Mews is a civil matter that would need to be resolved between the parties involved. It is not relevant to the consideration of whether or not the Provisional TPO should be confirmed, as this decision should only be taken in the interests of amenity. The ownership of the land and civil matters do not prejudice the Council's ability as a Local Planning Authority to make decisions in relation to the protection of trees where such decisions are made in the interests of amenity.

The confirmation of the Provisional TPO is justified in the interests of amenity and would provide a legal framework by which the Council could control any works to the trees in the longer term. The owner's agent has been advised that an application for the Council's consent to fell any of the trees can be made at any time and that any such application would be considered on its merits. To date no such application has been received.

The Council declared a Climate and Ecological Emergency in 2019 and has published its Climate and Ecology Strategy which sets out the route to net zero greenhouse gas emissions by 2030 for the borough. Improving air quality and biodiversity and responding to Climate Change are major priorities for the Council.

In 2023 the Council adopted a Climate Change Supplementary Planning Document (SPD) to provide guidance for the planning policies contained in the council's Local Plan that relate to climate change and to help implement the actions contained in the council's Climate and Ecology Strategy. Key Principle KPC17 in the Climate Change SPD advises that existing trees should be maintained and protected.

If confirmed, the TPO would not prevent works such as pruning or even felling from being carried out to the trees in the future; it only requires that consent be obtained from the Council before such works are carried out. The confirmation of the TPO would enable the Council to control such works so that they are not detrimental to the health or

appearance of the trees or in the case of felling, to require the planting of a replacement tree and to specify its size, species and location in order to preserve tree cover and amenity in the local area.

4 OPTIONS

4.1 The Council could allow the TPO to lapse, in which case tree T1 is likely to be felled and the Council would have no power to require the planting of a replacement tree.

4.2 Alternatively, the Council is empowered to confirm the TPO without modification. Having carefully considered all the representations received, Officers recommend this option in order to protect the amenity value provided by the trees and to provide a legal framework for the future management of works to the trees.

4.3 There is also provision within the Regulations to allow for confirmation of the TPO with modification, for example in order to exclude one of the trees from the Order, but Officers do not recommend such action in this case.

5 ARGUMENTS FOR THE RECOMMENDED ACTION

5.1 The confirmation of the Order will ensure that the amenity value of the trees is preserved and as such will prevent an unnecessary reduction in the quality of the environment in this part of the Borough and preserve the character and appearance of the Conservation Area.

6 IMPLICATIONS

6.1 There are no major financial, legal or staffing implications relating to the confirmation of a TPO.

7 CONCLUSION

7.1 The confirmation of the TPO is justified, as it would protect the amenity value provided by the trees, the character and appearance of the Conservation Area and the quality of the environment within the local area.

8 RECOMMENDATION

8.1 Confirm the Tree Preservation Order without modification.

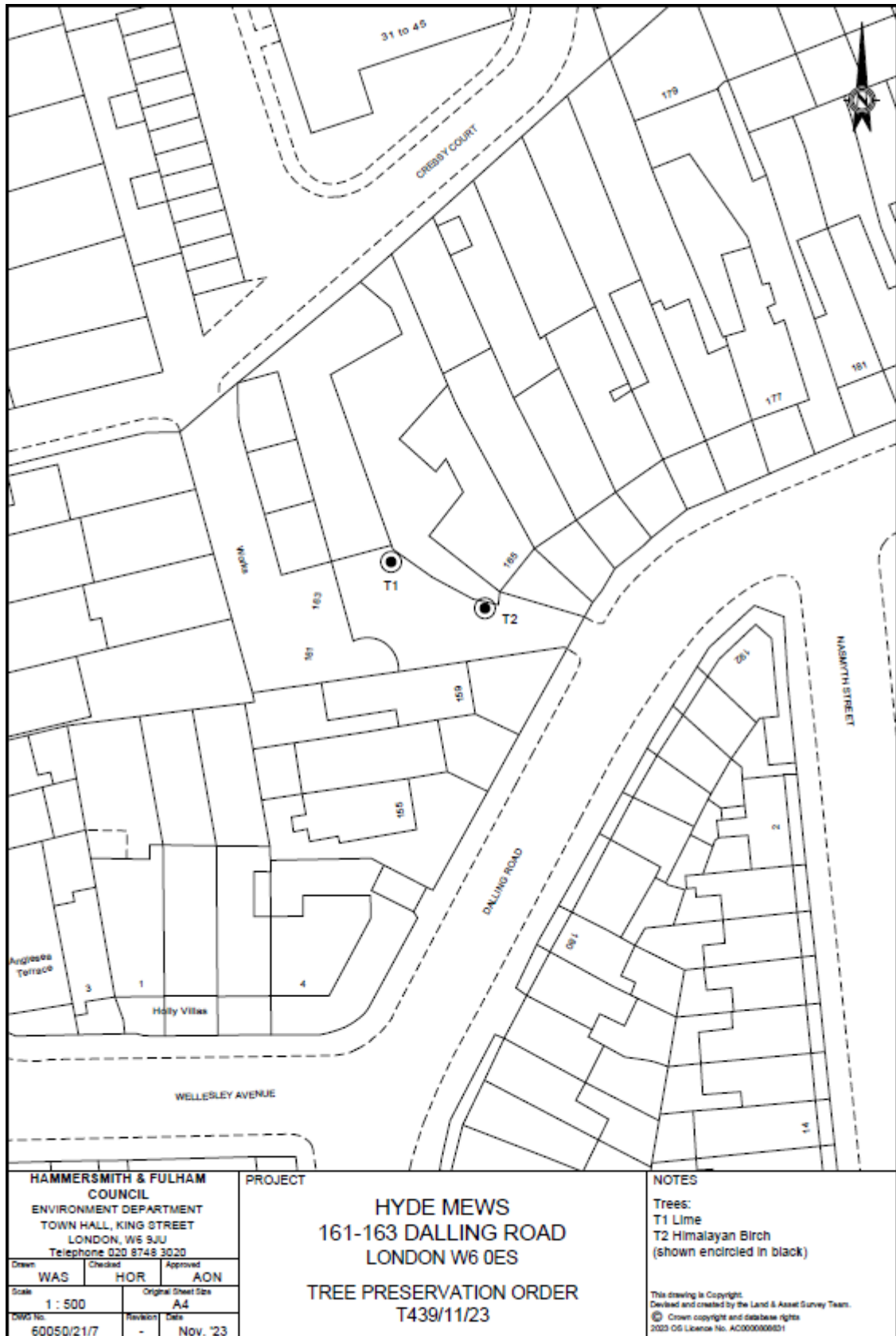




Figure 2:
Photograph of trees T1 and T2 as viewed from the pavement in Dalling Road.