

PLANNING AND DEVELOPMENT CONTROL COMMITTEE
11th FEBRUARY 2025

SUBJECT:

CONFIRMATION OF TREE PRESERVATION ORDER T448/10/24

LAND AT MILLER'S COURT, CHISWICK MALL, W4

WARD/S:

RAVENSCOURT

OFFICER:

ADAM O'NEILL, PRINCIPAL URBAN DESIGN & HERITAGE OFFICER

RECOMMENDATION:

The Committee resolve that the Tree Preservation Order T448/10/24 be confirmed without modification.

CONFIRMATION OF TREE PRESERVATION ORDER T448/10/24
LAND AT MILLER'S COURT, CHISWICK MALL, W4

1 DOCUMENTATION

1.1 TPO location plan. Photograph of tree T5 from British Grove South.

2 BACKGROUND

2.1 On 29th October 2024 delegated authority was given to make a Tree Preservation Order (TPO) at Miller's Court, Chiswick Mall. The TPO includes three Cherry trees (T1, T3 and T4), one Crab Apple tree (T2) and one Norway Maple tree (T5) 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 31st October 2024.

2.2 The Order was made following the receipt by the Council of Conservation Area tree works notice 2024/02372/TREE to fell 8 trees in the central courtyard at Miller's Court. It is understood that the Conservation Area tree works notice was submitted on behalf of Miller's Court Tenants Ltd.

2.3 Trees T1-T4 are located within the courtyard at the centre of the residential development and are visible from the public highway on either British Grove South or Chiswick Mall. Tree T5 at the rear of the residential development is highly visible from the public highway on British Grove South.

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 total eleven representations have been received. In total two objections to the confirmation of the Order have been received, one from Miller's Court Tenants Ltd and one from a resident at 15 Miller's Court. Nine representations in support of the confirmation of the Order have been received, from Nos. 1, 6, 8, 9, 14, 15, 19 and 20 Miller's Court and from the Hammersmith Society.

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 Two representations objecting to the confirmation of the TPO were received.

Objection 1:

Email and letter dated 5th November 2024 received from Miller's Court Tenants Ltd

This objection relates specifically to the inclusion of trees T1-T4 in the TPO and the main points in the letter are as follows:

'Millers Court Tenants is a Limited Company representing the interests of the Freeholders of 1-21 Millers Court, London W4 2PF and Cedar House, Chiswick Mall, London W4 2PS. We, the Directors of the Company, are responsible for managing the upkeep of the roads, gardens and other common parts on behalf of the Freeholders as set out on the Memorandum of Association. The Board is elected by the Shareholders at the Companies Annual General Meeting.'

'Over the past 12 months the Directors have been developing a scope of works for essential courtyard maintenance/repairs and have targeted a start date in the first half of 2025.

The proposed scope of works is as follows :-

a. Replacement of defective tarmac surfacing complete with brick edging. The current tarmac surfacing is in a poor condition resulting in water ponding during heavy rain. Due to the number of patch repairs undertaken in the past number of years, the current surface is unsightly. The brick bands are loose in a number of areas and are a potential trip hazard.

b. Works to existing 10Nr brick planters. A number of the brick planters are in a poor state of repair and require attention. Some of these planters have cracked as a result of the size of the trees. The 'brick on edge' coping is also loose in a number of areas as well as mortar re-pointing.

Following detailed consideration, the Board have concluded that the planters should be rebuilt on a like-for-like basis. Isolated repairs would be unsightly and would result in ongoing maintenance costs for the years going forward.

c. Works to trees. There are currently 8Nr trees in the brick planters to the courtyard area. Over the course of a number of years 2Nr trees have been removed as a result of decay. Following receipt of professional advice, the Board concluded that the most appropriate way forward would be to replace the 8Nr trees, grub out the roots and replant with new trees. 2Nr new trees would be planted to the missing brick planters. These works would be undertaken in conjunction with the rebuilding of the brick planters.

d. Conclusion. The Board concluded that all the works described above needed to be undertaken at the same time as a single project. This includes the replacement of the trees.'

The letter explains the rationale for the proposals as follows:

'a. Some of the trees have become far too large and the planter boxes were never intended to contain trees of this size. This has resulted in the brickwork 'cracking' in some of the planters which has become a maintenance issue going forward. This process cannot be reversed.

b. Shareholders have made us aware that they are unhappy with the size of the trees outside their first floor windows blocking light and restricting the view. This would never have been the intention of the developer back in the late 1960s.

c. It is probably unfortunate that in the past the trees have been allowed to grow and

have not been properly maintained. This has resulted in tree trunks of up to 400mm in diameter. No amount of pruning will change this. Some trees have been badly pruned in the past and are unsightly, and many of the flowering cherries are affected by a virus that is damaging their health.

d. Some shareholders have concerns with respect to the risk imposed by some of the courtyard trees. Over the years, trees have fallen which resulted in damage caused to a motor vehicle and a separate incident caused damage to the rear of one of the properties. As Directors, we have a responsibility for the safety of the shareholders and to the general public who walk through the courtyard.

e. The Board considers that, rather than dealing with one or two of the trees at a time, it would make sense to replace all the trees at once so that a consistent appearance can be achieved once more. A planned maintenance programme would be put in place to ensure that the errors of the past would not be repeated. It was unfortunate that, in making the planning application [sic] (2024/02372/TREE), Red Squirrel Surgery made no reference to replanting which was always our intention.

f. The Board are currently looking at a number of options for replacement trees to provide year-round interest, including species such as Acer, Cornus and Silver Birch. Consideration will be given to choosing trees that do not drop sap, do not need too much water and of interest to birds and insects. Trees would eventually grow to between 4-6 m in height with limited lateral spread.

g. It should be noted that the Company has to date collected funds from 80% of the shareholders. This reflects the majority support the Company has for the proposed works.'

The letter concludes that:

'we have no objection to the proposed Preservation Order T5 for the Norway Maple, we would fully support the proposal. We request that your team carefully consider the points raised above and do not proceed with making the orders permanent for T1, T2, T3 and T4, and permit the tree replacement works to proceed.'

Objection 2

Email received 10th November 2024 from resident at 7 Miller's Court

'Assuming those trees were planted in approx. 1970, the three Cherry trees (T1, T3, T4) and one Crab Apple tree (T2) are expected reach the end of, or even exceed their healthy lifespan. And without denying the positive contribution to the character and appearance of the Conservation Area, they decline in vitality, are increasingly susceptible to disease and may become dangerous. Protecting those trees would prevent replacing them with new healthy ones, hence ask the council to reconsider the Tree Preservation Order.'

3.2 Nine representations in support of the confirmation of the TPO were received including from the Hammersmith Society.

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. Officers have fully considered all the representations received.

The proposal by Miller's Court Tenants Ltd for a replacement tree planting scheme in the courtyard cannot be considered under the current consultation, which only relates to the principle of whether or not trees T1-T5 should be protected by a TPO. Miller's Court

Tenants Ltd were advised to submit an application for the Council's consent under the terms of the TPO, if they wished to pursue that option. An application (2024/02876/TPO) to fell and replace trees T1-T4 has subsequently been received and is currently being considered by Officers.

Some damage to one of the brick planters occupied by one of the TPO trees in the courtyard was noted, however it could be repaired and the growth of the tree could be controlled by pruning.

Officers carefully assessed all of the trees on the site against the criteria in Government guidance on the making of a TPO and the 5 trees included within the TPO are those which are visible from the public highway and which are considered to have significant amenity value and to make a positive contribution to the character and appearance of the Conservation Area. The other 4 trees in the courtyard which were proposed to be felled in the Conservation Area tree works notice were not included within the TPO due to their insufficient size, poor form, poor condition or lack of visibility from the public highway and may now be removed lawfully. The Council has no power to require the planting of replacement trees in respect of these 4 trees.

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 TPO trees in the longer term.

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 replacement trees and to specify their 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 trees T1-T4 could be felled lawfully and the Council would have no power to require the planting of any replacement trees.

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 The Council also has the option to confirm the TPO with modification to exclude one or more of the trees included within the Provisional Order. Officers do not recommend this option as all of the trees included within the Provisional Order are of sufficient amenity value to justify confirmation of the TPO.

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.

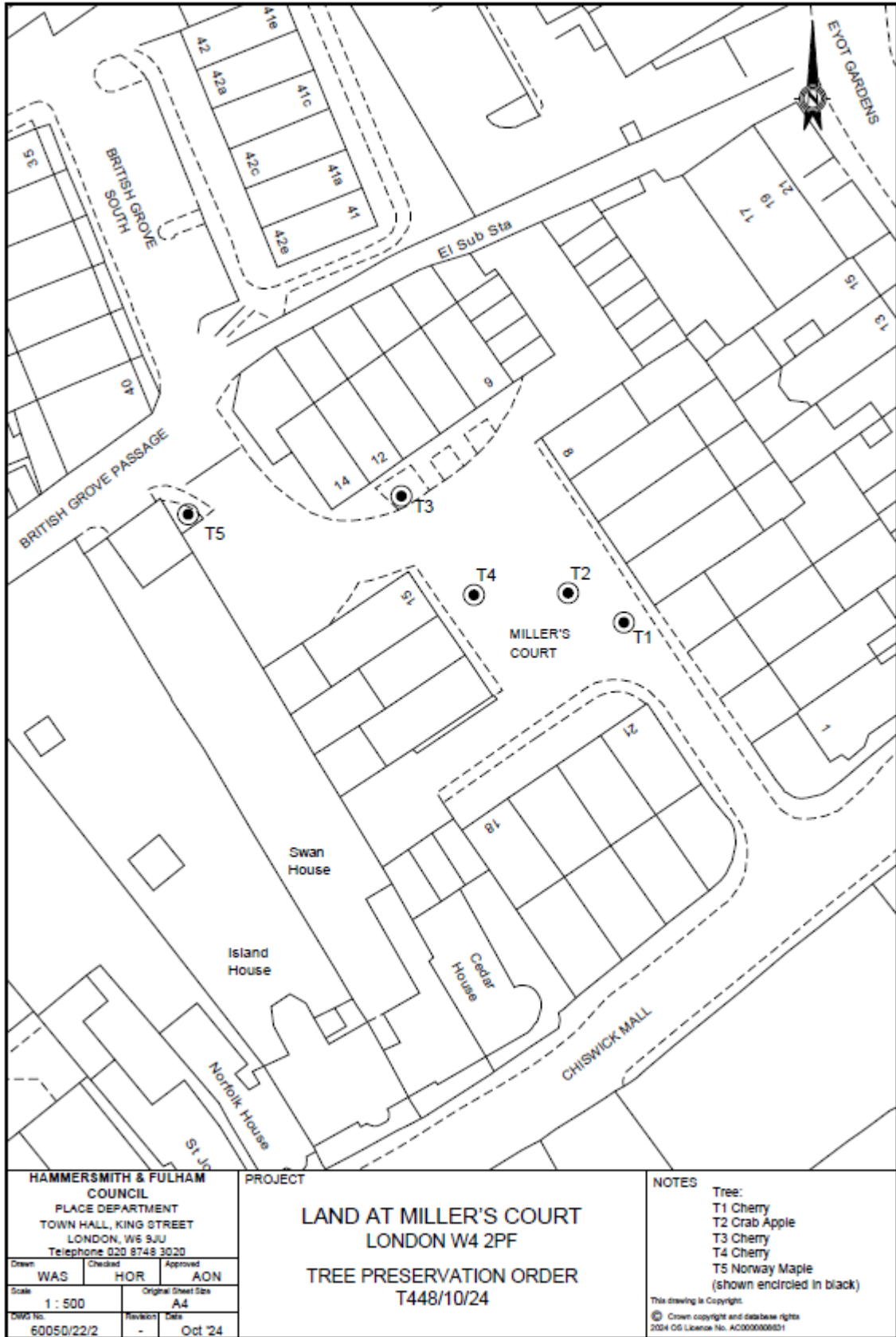


Figure 1: TPO location plan.



Figure 2:
Photograph of tree T5 as viewed from British Grove South.