

Report for: **Planning Committee**

Date of Meeting:	24 May 2023
Subject:	TPO No.969 East End Way (No.2) Pinner
Responsible Officer:	Rebecca Farrar, Arboricultural Officer
Exempt:	No
Wards affected:	Pinner
Enclosures:	Appendix A - TPO 969 map and schedule Appendix B – Site photographs Appendix C – Letters of Objection & support

Section 1 – Summary and Recommendations

The Council made provisional Tree Preservation Order (TPO) No. 969 on 12 December 2022. The TPO protects an Oak tree ('T1') as indicated on the attached plan (Appendix A) and covers the property at Maribar, East End Way, Pinner. Before confirming the order (i.e. making it permanent), the Council must consider any objections and representations duly made in respect of the provisional order. An objection has been received against this TPO in respect to the tree T1 Oak. This report considers the objection and concludes the grounds of objection do not warrant allowing the TPO to lapse without confirmation. It therefore recommends that the Committee confirms the order. The matter is being reported to the Committee as where there is an objection to a provisional TPO, the TPO cannot be confirmed under delegated authority and must be reported to the Planning Committee.

Recommendations:

The Committee is requested to:

1. Confirm TPO No.969 East End Lane (No.2) Pinner
2. Delegated authority to the Chief Officer to undertake the necessary processes required to confirm the TPO

Reason: (for recommendations)

The subject tree is considered to have significant public and visual amenity value, is notable for its historical importance, provides significant wildlife and habitat benefits and as such should be properly safeguarded. If this TPO is not confirmed within 6 months of it being served (i.e. by 12 June 2023 the protection will be lost.

Section 2 – Report

1. Background

- 1.1 Local planning authorities can make a Tree Preservation Order (TPO) if it appears to them to be 'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area'. Key criteria relate to visibility (by the public) and individual, collective and wider impact of the trees.
- 1.2 On 12th December 2022 TPO No. 969 was made in respect of 1 x English Oak (*Quercus robur*) in the rear garden of Maribar, East End Lane, Pinner HA5.
- 1.3 The Oak is clearly visible from East End Lane and can be seen between the two properties when viewed from the road. The slightly elevated position of the tree and rear garden allows for clear views of the tree from Paines Lane Cemetery to the west, along with glimpsed views from the north / north-east, viewed from Moss Lane and the footpath which links Moss Lane with Paines Lane.
- 1.4 The Oak appears to be one of the few surviving boundary Oaks dating from the area's farming past, prior to development of East End Lane. The Oak is shown on historic maps dated circa 1890.
- 1.5 The Oak is approximately 18m height with a crown spread of approximately 10m.
- 1.6 Attention was brought to T1 Oak by the tree owner (owner of Maribar) following a request for the tree's removal, as it was asserted that the Oak was the material cause of subsidence-related movement to the neighbouring property The Steps. Given the tree's non-protected status, this places the tree at risk of removal and an assessment using the TEMPO evaluation method¹ was carried out to assess the tree's suitability for TPO protection.
- 1.7 Taking into account the tree's condition, size and form, prominence, location and contribution to the local amenity and streetscene, a provisional TPO was considered expedient. TPO No. 969 was duly served on the property owner and the neighbouring property, The Steps.

¹ Tree Evaluation Method for Preservation Orders, a method used widely by Local Planning Authorities

2. Objections

- 2.1 An objection was received from the owner of the adjoining property ('The Steps'). Reasons for the objection are outlined as follows:

The Oak (T1) is causing subsidence-related damage to the neighbouring property (The Steps). The tree is considered to be the material cause of cracking to the property, which developed last Summer (2021).

Site investigations have been carried out and which demonstrate that the Oak is the material cause of this damage.

Based on information collected the subsidence specialist company Crawford and Company working on behalf of our insurers have validated the subsidence claim so are progressing with the insurers.

I am aware that under this TPO application the tree in question has a provisional TPO in force until 06/07/2023 so no works on the tree can proceed without authorisation from the council. As we are entering a period of monitoring any proposed management of the tree should also be put on hold as this risks adversely affecting any tests carried out and could be determined as interfering with the results.

3. Consideration of Objection

The Oak is causing subsidence damage to the property (The Steps)

- 3.1 This has not been conclusively proved.
- 3.2 The site investigations referred to in the objection were organised by the objector rather than appropriately qualified persons following recognised methodologies. These investigations comprise a drains survey, a trial-hole dug to 1m depth at the affected corner of the property, analysis of moisture content of the subsoil sample (to 1m depth) and analysis of roots recovered from the underside of foundations.
- 3.3 The drains survey confirmed that drains were in good repair and watertight, therefore leaking drains have been discounted as a possible cause.
- 3.4 The objector states that the trial-hole confirms that the soil is desiccated. However, the trial-hole was dug to only 1m depth therefore it has not been demonstrated that there is desiccation (drying out) at depth. Soil drying under normal seasonal changes can occur to 1m, irrespective of the influence of trees. Therefore, this does not conclusively implicate the Oak or demonstrate that the soil is desiccated at depth.
- 3.5 Oak roots were recovered from beneath the foundations and sent for analysis. These have been identified as emanating from Quercus (Oak) or Castanea (Chestnut) spp, and contain starch (meaning they were recently alive). However, the mere presence of roots beneath a building alone is only part of the whole picture - and proves 'root trespass' but not causation.

- 3.6 Based on information collected the subsidence specialist company Crawford and Company working on behalf of our insurers have validated the subsidence claim so are progressing with the insurers.
- 3.7 It is understood that Crawfords (the loss adjusters for the property) have now accepted a claim and level monitoring commenced in March 2023. In order to show that movement is 'cyclical' (seasonal) at least 6 months level monitoring should be provided. Level monitoring has only just commenced and only some of the evidential requirements have been met – therefore the evidence is inconclusive until the full suite of site investigations has been provided.
- 3.8 In line with London Tree Officers Association's (LTOA's) Risk Limitation Strategy guidelines, the evidential requirements for a tree of this value should include:
- (a) Engineer's report on assessment of damage
 - (b) Plan and profile of foundations
 - (c) Site plan
 - (d) Arboricultural report
 - (e) Trial pit and borehole to 3-5m. Control borehole (away from the area of damage)
 - (f) Root ID from beneath foundations
 - (g) Soil analysis tests including: soil moisture content / plasticity tests / modified soil plasticity tests
 - (i) Heave assessment (heave being the reverse of subsidence and can occur when the causes of subsidence are mitigated; if heave occurs it can cause further damage to a property)
 - (j) Crack and level monitoring (minimum 6 months)
- 3.9 So whilst it is acknowledged that formal investigations are now being undertaken, these are yet to be completed and therefore are not considered sufficient reason to allow the provisional TPO to lapse (i.e. not be confirmed)

As we are entering a period of monitoring any proposed management of the tree should also be put on hold as this risks adversely affecting any tests carried out and could be determined as interfering with the results.

- 3.10 This comment refers to application reference P/0537/23 which has been submitted by the tree owner following the TPO being served.
- 3.11 The Council does not have powers to 'pause' or put TPO applications on hold once they have been submitted, validated and registered. Each application will be considered on its own merits and the Council cannot refuse any reasonable requests for pruning.

4.0 Representations of Support

- 4.1 Representations of support were received from the son of the owner of the property. These are outlined below:
- (a) The tree is one of high value and which makes an important contribution to the area. The tree has amenity and historical value. Such trees are becoming increasingly valuable in urban areas.

- (b) Research demonstrates that climate change is increasingly significant. Buildings will continue to move irrespective of the presence of trees.
- (c) Other factors should be considered, such as the inadequacy of the current foundations, historic alterations, impermeable surrounding surfaces and climate change. The movement took place following the direst and hottest summer on record.
- (d) The single test carried out is inadequate. The test methodology used is inconclusive and has been used in isolation. There is insufficient evidence to determine that the tree is the cause of the problem.
- (e) Reasonable steps have been taken by the tree owner to mitigate. An application has been made to crown reduce the tree.
- (f) Removal of the TPO would be contrary to local authority guidance, where removal should be considered the last resort.

4.2 These points are addressed in previously sections relating to the background / justification for the provisional TPO and response to the objection received.

5. Conclusion

5.1 The Oak merits protection and fulfils the necessary criteria. The Council has a statutory duty to make Preservation Orders where considered expedient.

5.2 To date there is insufficient evidence to clearly implicate the tree as the material cause of damage. A full suite of site investigations and monitoring is required to show, on the balance of probabilities, that T1 is the material cause. Confirming the TPO will allow the council to request this evidence as part of a formal TPO application.

5.3 In the event that the tree is clearly implicated in the damage, complete removal may not be necessary nor proportionate. It should be possible to alleviate water uptake via cyclical pruning. This has been shown to be an effective solution. If the TPO is confirmed, such matters can be fully considered through any applications to undertake works to the tree (with such applications being required by virtue of the tree being covered by a TPO).

5.4 The Committee is requested to give due consideration to the objection and the Arboricultural Officer's response to the objection outlined above.

5.5 It is recommended that the TPO is confirmed as set out in Appendix A.

Equalities impact

In considering this matter the Council has regard to its equalities obligations including its obligations under section 149 of the Equality Act 2010.

For the purposes of this report and recommendation there are no adverse equalities issues.

Legal Implications

A TPO is required to be confirmed within 6 months period (i.e. 12 June 2023) otherwise it will no longer be protected. Any other legal implications of this report / recommendations are addressed in the body of the report.

Financial Implications

The cost of the assessment of any applications for works to trees protected by the TPO would be from the revenue budget of the Planning Service.

Issues of compensation can arise when the Council refuses an application for works to a tree where the tree has been implicated in subsidence. The risk and value of any potential compensation claim would be considered at the time an application for works to the tree is determined.

Section 3 - Statutory Officer Clearance

Statutory Officer: Jimmy Walsh

Signed on behalf of the Monitoring Officer (by email)

Date: 10 May 2022

Planning Policy Manager: David Hughes

Signed by the Planning Policy Manager



Date: 10 May 2022

Chief Officer:

Signed by the Chief Officer



Date: 12 May 2023

Mandatory Checks

Ward Councillors notified: YES – upon publication of the agenda

Section 4 - Contact Details and Background Papers

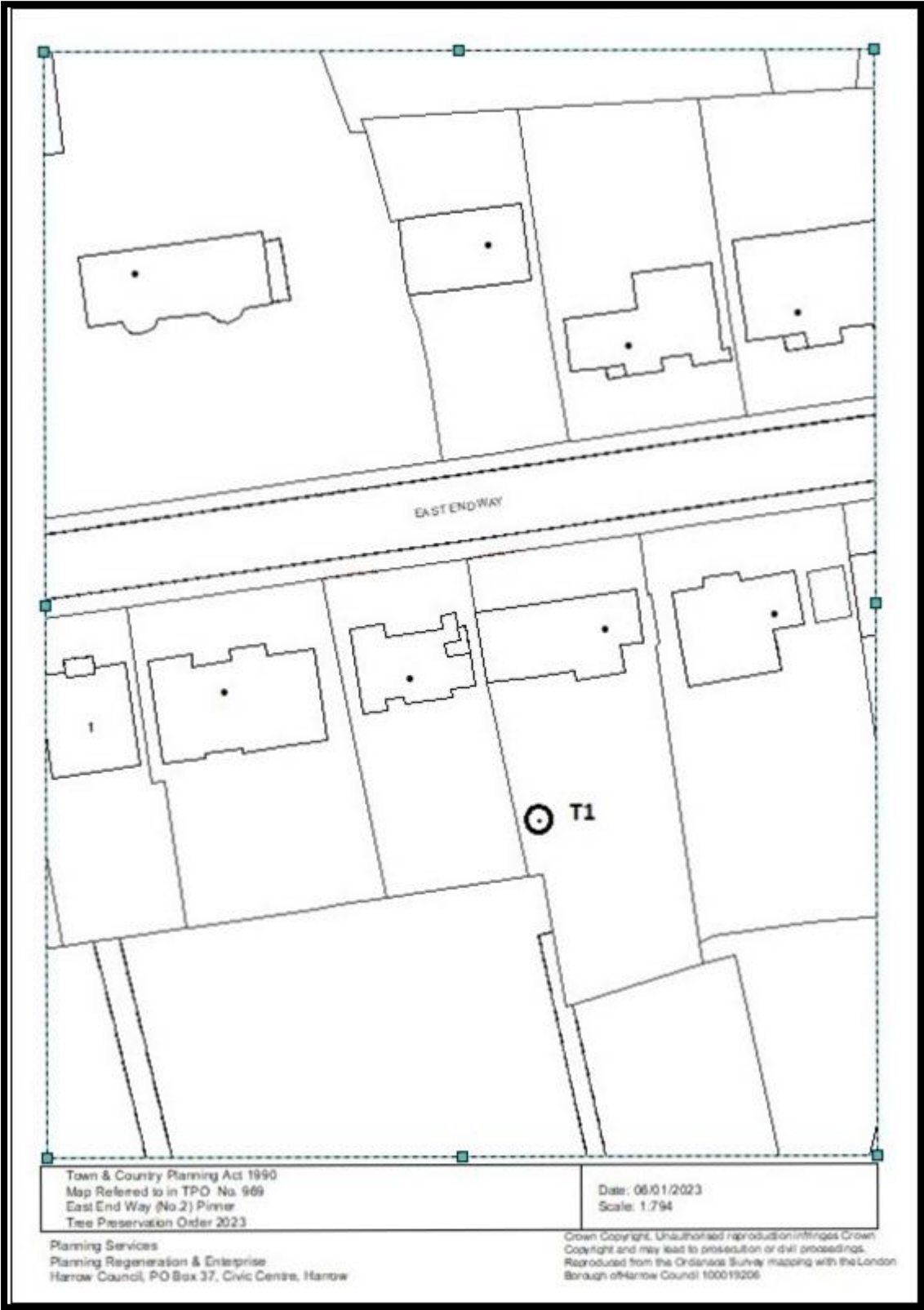
Contact: Rebecca Farrar, Tree Officer, direct line 020 8736 6092.
rebecca.farrar@harrow.gov.uk

Appendix A - TPO 969 map and schedule

Appendix B – site photographs

Appendix C – letters of objection & support

Appendix A - TPO 969 map and schedule



SCHEDULE 1

SPECIFICATION OF TREES

TREES SPECIFIED INDIVIDUALLY

(encircled in black on the map attached hereto ["the map"])

Reference on Map	Description	Situation
T1	Oak	Rear garden of Maribar

TREES SPECIFIED BY REFERENCE TO AN AREA

(within a dotted black line on the map)

Reference on map	Description	Situation

GROUPS OF TREES

(within a broken line on the map)

Reference on Map	Description	Situation

WOODLANDS

(within a continuous black line on the map)

Reference on Map	Description	Situation

Appendix B - Site photographs



Top: T1 Oak viewed from East End Way
Bottom: T1 Oak viewed from rear garden of Maribar



Appendix C – Letters of objection / support

Letter of objection

Please take this e-mail as my formal objection to the TPO application, reference **TPO 969**

The reason for the objection is that late last summer our house – ‘The Steps’ East End Way, Pinner developed a series of cracks on the South and East Elevations, these consisted of:

- A diagonal crack on the Southeast corner of the property towards the top of the playroom patio door which then spreads horizontally above the patio door. This crack is evident both inside and outside the property.
- A diagonal crack on the Southeast corner of the property towards the bottom of the playroom patio door. This crack is evident on the outside of the property.
- There is also evidence of ‘creasing’ in the interior plaster to the side of the playroom patio door
- A series of vertical, diagonal and horizontal cracks on the south and east wall elevations of the property, some of these are evident on both the inside and outside of the property on both ground and first floors (replastered master bedroom and ensuite).
- A large crack across the tiled floor running from the back (South) to the front (North) of the property, with some additional cracks in tiles running East to West with a lowering of the floor in that direction
- Cracks in the load bearing brick arch between the kitchen and playroom
- The door to the master bedroom ensuite no longer able to lock and the sliding wardrobe doors no longer stay in position due a change in level.

It is worth stating that the affected area of the house has been constructed since 1950, so this is not a new build or recent works and will have been subjected to prolonged wet and dry periods many times over this period without issue.

Following the above we carried out some investigations consisting of:

1. Checking the condition of a drain running under the affected area of the house
 - A drain camera was inserted through the drain and this was found to be in good condition, free running with no signs of obstructions or blockages.
2. Digging a trial pit at the Southeast corner of the property to expose the foundations and check for signs of any roots.
 - The foundations at this location were approx. 850-900mm in depth
 - Several roots were found at and below the depth of the foundations.
 - Samples of the roots were sent away for identification and were identified to be from an oak tree species (see attached report). The oak tree for which the TPO 969 application is being made is the only oak tree or associated species close to our property, located in our neighbour’s garden at ‘Maribar’ East End Way Pinner.
3. Taking a soil sample from just below foundation level and sending for analysis
 - The results from the soil sample (attached) came back showing the ground below the foundations was desiccated –this is based on applying the Driscoll relationship of $0.4 \times \text{Liquid Limit}$ give a value of 27.6%, which is 1.6% above the actual soil moisture content of 26% indicating the clay soil is desiccated at the location.

Based on information collected the subsidence specialist company Crawford and Company working on behalf of our insurers have validated the subsidence claim so are progressing with the insurers.

With the ongoing investigation and insurance claim we object to TPO 969 until this matter is resolved. I will further state that this TPO application has only been made by our neighbour at 'Maribar' once we had shared the above information relating to the damage to our property and subsequent investigations and findings.

I am aware that under this TPO application the tree in question has a provisional TPO in force until 06/07/2023 so no works on the tree can proceed without authorisation from the council. As we are entering a period of monitoring any proposed management of the tree should also be put on hold as this risks adversely affecting any tests carried out and could be determined as interfering with the results.

Attached with this e-mail are copies of the soil sample reports, root analysis and a selection of images showing the damage to our property.

Regards

Mr Kieran Bass

'The Steps' East End Way
Pinner
HA5 3BS

Letter of Support - Maribar

Maribar
East End Way
Pinner
HA5 3BS

8 March 2023

Rebecca Farrar
Harrow Council

Email: Rebecca.farrar@harrow.gov.uk

Dear Ms Farrar,

RE- ADDITIONAL LETTER OF SUPPORT FOR TREE PRESERVATION ORDER 969

I write on behalf of owner of Maribar, East End Way, Pinner HA5 3BS to further support the ratification of interim TPO 969 which was made following application dated 23 December 2023 for a Tree Preservation Order to be placed on the tree which is located in the rear garden of my mother's home.

I refer to my letter of 9 February 2023 in which I set out my view that, at this stage it is not appropriate to consider whether the adjoining owners claim, that the tree is causing damage to this property, has merit, it is simply to establish whether the tree is worthy of preservation, whilst a full investigation is carried out. In your response you suggested that a refusal to allow removal of the tree may result in potential losses to the Authority thus you are considering whether the claim has merit.

The current position is that an Interim Order has been made, an appeal lodged but no application for the tree's removal has been made. As a matter of law, I appreciate the Authority can be liable for compensation in the event that a) it is demonstrated that the tree is causing the problem and b) consent is then refused to remove the tree. I am not aware that an application to the Authority has been made to remove the tree just an appeal to the Order.

The buildings insurers for the tree owner have been informed and have communicated with the owner of the affected property. I am led to believe that the affected properties insurers are aware of the position but not whether a claim has been made on that policy.

In the knowledge that the Authority does have a potential liability, and should it be conclusively demonstrated the tree is the sole cause of the problem then the Authority has the ability release itself from the liability by agreeing to the tree's removal. For this reason alone, I reiterate my view that at this stage it would be premature to remove the Order. Removing the Order would leave the tree vulnerable to irreversible damage.

Summary.

The circumstances of this case, evidence presented and recommendations to Local Authorities on strategy and policies from the London Tree Officers Association and Building Research Establishment guidance is summarised as follows.

- The LTOA's guidance is that the tree should be considered one of High Value that makes an extremely important contribution to the area. It has significant amenity value which research and guidance states is increasingly valuable in urban areas. Furthermore, it is of some historical significance.
- Research demonstrates that climate change is becoming an increasingly significant factor. I quote the LTOA guidance "*Climate change is already happening; buildings will continue to move irrespective of the presence of trees*"
- There are other factors that must be considered such as the inadequacy of the current foundations, historic alterations to the affected property, the impermeable surfaces surrounding the affected area and climate change in particular that the settlement took place after the hottest and driest summer on record.
- The single test carried out is inadequate. Furthermore, test methodology used is inconclusive and particularly so in this instance as it has been used in isolation. Guidance recommends a number of investigations which have not been carried out. The limited evidence obtained is insufficient to determine that the tree is the cause of the problem and further tests and longer-term seasonal monitoring are necessary.
- The legal position is accepted, save to say that there are a number of significant issues to be established before any liability to the Authority might arise. In this eventuality and upon receipt of an application to remove the tree, the Authority would then have the opportunity to step away from this liability by granting consent to its removal should the evidence be sufficiently robust.
- Steps have been taken by the tree owner to mitigate the position. In particular application has been made to severely reduce the tree and these works will take place as soon as consent is given. This is in accordance with the guidance to Authorities to diminish claims. "*Reasonable steps are being taken to avert the loss or damage and mitigate its extent*" which will mitigate a possible liability to the authority. It is not known whether the owner of the affected property owner is taking any similar actions such as removal of the impermeable surfaces surrounding the property.

In light of the above I respectfully suggest that it would be premature to remove the protection currently afforded to the tree and at all reasonable steps are being taken by the tree owner to mitigate damage to the adjoining building and the authority's liability.

Removal of the statutory protection would be contrary to local authority guidance, where removal of tree, particularly one of this stature, should be considered the last resort rather than an ill-considered "knee-jerk" reaction of blaming the tree without a full and thorough investigation.

Furthermore, removal of the protection would leave this valuable and significant tree vulnerable to irrevocable damage.

I implore the Authority to maintain the protection in place.

Yours sincerely

Peter Amstell

Peter Amstell