

Meeting:	Development Management Committee
Date:	Wednesday, 21 st November 2007
Subject:	Tree Preservation Order No. 882
Key Decision: (Executive-side only)	No
Responsible Officer:	Graham Jones, Director of Planning, Development & Enterprise
Portfolio Holder:	Councillor Marilyn Ashton
Exempt:	No
Enclosures:	<ol style="list-style-type: none"> 1) Mr Biddle Freedom of Information Act Request 27th April 2007) 2) Council letter – dated 2nd July 2007. 3) Mr Biddle letter - dated 18th July 2007. 4) Council letter – dated 23rd July 2007. 5) Council letter – dated 23rd August 2007. 6) Council letter – dated 7th September 2007. 7) Mr Biddle email – dated 7th September 2007. 8) Council letter – dated 1st October 2007.

SECTION 1 – SUMMARY AND RECOMMENDATIONS

Objections have been made against Tree Preservation Order (TPO) No. 882 that covers trees at Nos. 7 and 9 Manor Road. This report sets out why this TPO should be confirmed.

RECOMMENDATIONS:

The Committee is requested to confirm TPO No. 882 notwithstanding the objections.

REASON: TPO No. 882 must be confirmed by November 24th 2007. After this date, the trees currently covered by this TPO will have no statutory protection.

SECTION 2 - REPORT

- 2.1 On 24th May 2007, TPO No. 882 was made in respect of 4 x Ash trees. The TPO was made in light of a planning proposal to demolish the properties at 9-17 Manor Road and construct block of flats with rear vehicular access. The latter access and associated car parking would impact directly on the 4 x Ash trees at No. 7 and 9 Manor Road. Three of the Ash trees are sited within the garden of the objector, Mr Biddle.
- 2.2 On 27th April 2007, Mr Biddle sent in a letter requesting general information about TPOs in his ward. On 2nd July 2007, the Council sent a letter detailing the information required.
- 2.3 On 18th July 2007, Mr Biddle sent in a letter, in essence stating that the TPO had been served dishonestly, that the Council was discriminating against him and that the TPO would "hurt him". A letter dated 23rd July 2007 was sent to address these issues. A request was made in this letter to arrange a site visit to discuss the objections and carry out a detailed inspection of the subject trees.
- 2.4 After 1 month there was no news from Mr Biddle regarding the latter site visit. Another letter, dated 23rd August 2007, was sent with a request for a site visit. Reference was made to the use of powers of entry should Mr Biddle not respond.
- 2.5 On 7th September 2007, a formal letter was sent to Mr Biddle informing him of the steps being taken to obtain a warrant of entry.
- 2.6 On the same day (i.e. 7th September 2007), Mr Biddle sent an email again referring to discrimination and the lack of replacement street tree planting in the Borough. An email was sent to Mr Biddle informing him to raise his complaint about lack of replacement tree planting with the Council's arboricultural operations manager.
- 2.7 A site visit was subsequently arranged to survey the trees. During the site visit, it was confirmed that the Ash trees were worthy of a TPO (although covered with ivy that could be managed). A general discussion was held with Mr Biddle about TPOs and the latter ivy issue. Mr Biddle was then informed that the Council's Planning Arboricultural Officer would be recommending the TPO for confirmation. Given the protracted correspondence from Mr Biddle, he was asked to send in a letter specifying his objections to confirmation of the TPO.
- 2.8 A reminder letter was sent to Mr Biddle on 1st October 2007 requesting him to send in his objections. To date the Council has had no response from Mr Biddle.
- 2.9 The current position is that only a temporary 6-month statutory protection is accorded to the subject trees by virtue of Section 201 of the Town and Country Planning Act 1990 (as amended). This temporary protection

expires on 24 November 2007. If the TPO is not confirmed by this date, the trees will have no statutory protection.

- 3.0 Regulation 5 of the Town and Country Planning (Trees) Regulations 1999 provides that if objections are properly made, a Local Planning Authority cannot confirm a TPO without giving the objections proper and due consideration.
- 3.1 There is no right of appeal to the Secretary of State against the confirmation of a TPO. However, under Section 288 of the Town and Country Planning Act 1990 ("the Act"), the validity of a TPO can be challenged on a point of law by an application to the High Court within six weeks of the date the TPO is confirmed on the grounds that: -
- 3.1.1 The TPO is not within the powers of the Act, or
- 3.1.2 The requirements of the Act (or Regulations made under the Act) have not been complied with in the making of the TPO.
- 3.2 The Committee is requested to give the objections and the full circumstances due consideration. It is the Arboricultural Officer's opinion that the objections have been adequately addressed.
- 3.3 It is accordingly recommended that the TPO be confirmed.

Financial Implications

Performance Issues

Please provide details of specific performance indicators on which this report impacts (LAA, BVPI, CPA, PAF). What is the target for positive change in this PI or how is a negative impact being mitigated?

SECTION 3 - STATUTORY OFFICER CLEARANCE

Name: Sheela Thakrar	<input type="checkbox"/>	on behalf of the* Chief Financial Officer
Date: 15 th November 2007		
Name: Jessica Farmer	<input type="checkbox"/>	on behalf of the* Monitoring Officer
Date: 13 November 2007		

*Delete the words "on behalf of the" if the report is cleared directly by Myfanwy or Hugh.

SECTION 4 - CONTACT DETAILS AND BACKGROUND PAPERS

Contact: Russell Ball, Planning Arboricultural Officer, extn: 6092

Background Papers: Tree Preservation Order NO. 882

IF APPROPRIATE, does the report include the following considerations?

1.	Consultation	YES/ NO
2.	Corporate Priorities	YES / NO
3.	Manifesto Pledge Reference Number	

①

Freedom of Information Request

Detailed Request

Please supply

Bluebook No policy
but JB perform ✓

No policy

18
770's
Total

For EACH TPO included in EITHER of the numbers above – which includes temporary ones imposed since April 2006 that were not made permanent:

Whether it is temporary or permanent - 9

An estimated percentage that the trees covered by those TPO's represents compared to the total number of trees in the Ward as a whole. (If insignificant, just say so)

Whether the TPO existed before April 2006.

Whether or not any discussion about potential planning applications covering any part of the area covered by the TPO had been entered into with developers during the two months before the TPO was imposed.

This information should not be onerous to provide, as I believe that there are very few TPO's in the Ward.

The detail requested is not directly available for public inspection – although elements of the information are, and could probably be co-related.

If the Council were to carry out its responsibilities relating to conservation properly, this detail should be readily to hand.

Derek Biddle, 9 Manor Road, Harrow, HA1 2NZ

Dated 25 June 2007.



2)



Urban Living

Mr Biddle
9 Manor Road
Harrow
HA1 2NZ

2nd July 2007

Dear Mr Biddle

Tree Preservation Orders (TPOs)

Thank you for your letter of 27th April that has been passed on to me for reply. Below are the responses to the points you raised in your letter:

Policies

Beyond general statements in the Council's UDP (EP29-EP31: copies enclosed), there is no policy which identifies the actual types and location of trees for TPOs. The Council's reasons for making TPOs are threat of:

- (1) Development,
- (2) Change of ownership
- (3) Bad management.
- (4) In addition TPOs may be made as part of reviewing old Area Order (eg TPO 10).

We do, however, have a pro-forma that we then use to assess a tree's suitability for a TPO (copy enclosed).

Greenhill Ward

There are 16 TPOs covering the ward (see attached excel sheet). You are welcome to come and view the files in the office at Garden House, 5 St John's Road, HA1 2EE. These are permanent TPOs made before April 2006. We do not have figures comparing the number of TPO'd trees versus those not protected. Generally we do not discuss TPOs and potential planning applications with developers as there is a high probability that trees (worthy of a TPO will be felled) before the actual application is made.

I hope the above addresses your points. Please come back to me if you are unclear on the points above or if I have not fully answered any of your points.

Yours sincerely

A handwritten signature in black ink, appearing to read "Russell Ball".

Russell Ball
Planning Arboricultural Officer (T: 0208 736 6092)

Harrow Council, Planning Dept, PO Box 37, Civic Centre,
Station Road Harrow HA1 2UY

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3)

9 MANOR ROAD
HARROW
MIDDLESEX
HA1 2NZ

3

Mr Russell Ball
Planning Arboriculture Officer
London Borough of Harrow

18 July 2007

Dear Mr Ball

Thank you for your letters, and in particular the details of the existing TPO's in Greenhill Ward.

I will not be able to be home to let you get into my garden on 19 July.

It will also not be a good idea for you to come across from a neighbour's back garden as I have a dog that had a hind leg operation on Tuesday, and he will be in the garden kennel to keep him confined and away from disturbance. If he gets agitated it could undo some work that has just cost a lot of money. He is not an aggressive dog, but if he stands on his hind legs against the kennel grill due to someone invading his territory, it could do damage to him.

While you are visiting my neighbours, please take a look in my **front** garden (which will not disturb the dog)

Please let me know how many Ash saplings are there (which I am currently not able to deal with) and tell me whether or not these will cause problems in the future and whether these are considered 'important' or of 'high amenity value'.

*Will not be
Not worthy
of a TPO*

I think that there are a lot of saplings that need dealing with now, which will otherwise cause problems rather than enhance value. If you disagree, please tell me how I am wrong.

This might put the value of the Council's TPO into perspective and indicate how others might see it.

In any event, your letter of 28 June

- Refers to 'Area Order No 1'. This was not referred to in the Formal Notice.
- Says that it covers 1-11 Manor Road. The Order covered 1-13.
- Mentions 'resurvey of trees'. No earlier survey took place.
- States that the TPO was due to a 'threat of development'. This was not mentioned in the formal Notice, where the reason given was to protect trees of high importance and amenity value. Is this an indication that the Formal Order was in error?

If the trees in my garden are of high amenity value, then they will be visible from the road. I cannot quite understand why access is needed. After all, the public will not be coming onto my property in order to enjoy that 'high amenity' value.



It is now obvious that the Council's reason is not the one stated on the order, and has been issued dishonestly. Also, I cannot believe that four/five properties in Manor Road are the only ones in Greenhill Ward that are 'under threat of development'!

I notice that the last TPO made in the ward was in 2002, and that is the only one this century. There are only 16 in total.

From numbers 1 to 17 Manor Road, ^{we refused all of them} the Development Control Committee received four formal Planning Applications in the last five years (and all before the Council found it had financial problems in 2006.) **None of these applications resulted in a TPO.**

The Comfort Hotel has put in at least eight Applications in that period, some since April 2006. **None of these resulted in a TPO.** ^{No suitable trees}

X 26-28 Manor Road had an application in recently. **This did not result in a TPO.** ^{P/3109/06/DT}

You note in your letter of 2 July that you do not discuss TPO's with developers due to the fact that any trees worthy of a TPO would have already been felled prior to such a pre-application meeting. I think you are quite right – developers are not foolish, and the Council issuing a TPO would be like closing the door after the horse had bolted. ^{+ P/2023/06/COV}

In that case, why did a TPO notice – giving a dishonest reason - arrive on my mat just days after such a meeting? ^{attached on appeal}

I suspect that it is about extracting money from the developers, and while I have no objection to this in principle:

If the developer walks away after you have put a TPO on the property

The fact that there is a permanent TPO will not hurt the developer.

The fact that there is a permanent TPO will not hurt the Council.

The fact that there is a permanent TPO WILL hurt us.

Why are we being discriminated against in this way?

It might be in your interests to draw this letter to the attention of your legal department, as they may wish to withdraw the TPO that was issued dishonestly.

Please send me details of the Complaints Officer for your service.

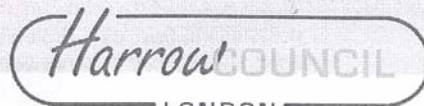
Yours sincerely



Derek Biddle



4)



LONDON

Community & Environment Services
Andrew Trehern
Corporate Director

4

Mr Biddle
9 Manor Road
Harrow
HA1 2NZ

23rd July 2007

Dear Mr Biddle

Tree Preservation Order (TPO) No. 882

Thank you for your letter of 18th July 2007. I would like to respond to as follows:

A) Ash tree saplings in front garden: at this stage it is not possible to forecast what problems these trees may/may not cause. Currently, they are not considered worthy of a TPO.

B) Area Order No. 1: this Area was referred to in Schedule 1 and the map that was supplied in the TPO document.

C) Coverage of the TPO: the properties 1-13 Manor Road are specified in the above Schedule and map which accompanied the Notice.

D) Survey: Before TPO No. 882 was made the trees were viewed from the surrounding roads. The purpose of the subsequent survey - carried out on 19th July - was to survey the individual trees. Please see my request at the end of this letter regarding your property.

E) Error with TPO: TPO No. 882 was served in line with our standard legal procedures and the recommendations cited within "TPOs: a guide to the law & good practice" (2000) as issued by central Government.

F) High Amenity: Please see point 'd' above.

G) 'Dishonest TPO': Please see point 'e' above.

H) 1-17 Manor Road, Comfort Hotel and 26-28 Manor Road: Please see the enclosed sheets for your information as supplied by our Development Control section. These pre-date my time here and so I'm unaware of any distinct tree issues. I can state that, in Harrow, where necessary, TPOs are used to protect trees if they are threatened by development.

I) Developers and Emergency TPOs: TPO No. 882 is an emergency TPO. As such it is valid for only 6 months (24th November 2007). After this time period, if a permanent TPO is not made, then the trees will lose their protection status. Developers may, over a number of years, re-assess sites for repeat/revised applications. If at any time if it is known that trees have lost their protection status then they may be removed before a formal Council planning application is made.

Harrow Council, Garden House, 5 St Johns' Road, Harrow, Middx. HA1 2EE

Switchboard: 020- 8863 5611 email: info@harrow.gov.uk web: www.harrow.gov.uk



J) "TPO will hurt us": Protected trees may be pruned with permission and/or felled should they become dead, dying or dangerous. One advantage of the aforementioned permission is that the Council is able to give tree owners impartial, objective advice as we have no financial interest in the management of protected trees.

Given the above, and the fact that there is a threat of development in this section of Manor Road, it is my opinion that the residents have not been discriminated against with TPO No. 882.

Could you please contact me at your earliest possible convenience so I may gain access to inspect the Ash trees on your property.

I look forward to hearing from you soon.

Lastly, the Council has a formal complaint procedure, a copy of which is enclosed. I will forward a copy of your letter and my reply to Mr Andy Parsons (Head of Planning) for his consideration of your complaint.

Yours sincerely



Russell Ball
Planning Arboricultural Officer (T: 0208 736 6092)

cc Andy Parsons



5)



LONDON
Community & Environment Services
Andrew Trehern
Corporate Director

5

Mr Biddle
9 Manor Road
Harrow
HA1 2NZ

23rd August 2007

Dear Mr Biddle

Tree Preservation Order (TPO) No. 882

I write further to my letter of 23rd July in which I requested that you contact me in order to finish the tree survey work and subsequently confirm the above TPO.

Unfortunately, if I do not hear from you by 7th September we will have to initiate powers of entry to your property under Section 196A, of the Town and Country Planning Act 1990 (as amended by the Planning Compensation Act 1991).

I look forward to hearing from you in the near future.

Yours sincerely

A handwritten signature in black ink, appearing to read "Russell Ball".

Russell Ball
Planning Arboricultural Officer (T: 0208 736 6092)

6)



Mr Biddle
9 Manor Road
Harrow
HA1 2NZ

Direct Line: 020 8736 6092

Fax: 020 8424 1551

Date: 7th September 2007

Our Ref: TPO/882/RB

Dear Mr Biddle

TOWN AND COUNTRY PLANNING ACT 1990

Site: 9 Manor Road

Re: Access to Survey Trees for the purpose of Making a Tree Preservation Order

I refer to the above and as I indicated in my letters to you dated 23rd July and 23rd August 2007 (copies enclosed), the local Planning Authority is seeking access to this property to carry out the above. To date we have not received any communication in relation to dates to visit your property.

Access to this property is still required. I am now in the process of preparing documentation for the Council's Head of Legal Services, to obtain a warrant of entry for the above property, through the courts.

I would be grateful if you could arrange for me to have access to the property on **Wednesday, 12th September 2007 at 10:30am** for the purpose of carrying out the survey. If you are unable to attend the property personally, you may wish to have a friend, relative or your representative attend. You could also leave the keys with a neighbour.

This letter serves as our final attempt to contact you regarding access to the entire property. Should you not provide access within this period you should write to me indicating the location at which you wish any new keys for new locks at the property, to be left.

In this connection, I must draw your attention to Section 169C(2) of the Above Act, which states that any person who wilfully obstructs a person in the exercise of right of entry shall be guilty of an offence.

Thank you for your assistance in this matter.

Yours faithfully

Russell Ball

Tree Preservation Officer



Harrow Council, Planning Dept, Garden House, 5 St John's Road, Harrow, HA1 2EE

Switchboard 020 8863 5611 email info@harrow.gov.uk web www.harrow.gov.uk



7)

Mr R Ball
Arboricultural Officer
London Borough of Harrow.

7 September 2007

Dear Mr Ball

TPO 882 – Area Order No 1 -

I write in response to your note promising to break in to my property to survey trees in my garden.

I had intimated earlier that our dog had undergone expensive surgery at the time that you proposed to visit, and that it would take a while for it to heal adequately for strangers to be visiting his garden.

I now think that it will be alright for you to come, and I would suggest that you call me to fix a day.

In your last letter, you refuted that we were being treated differently to others – which is what I believe the definition of discrimination is.

The facts in your earlier response do – I believe – speak for themselves. The last TPO put into place in Greenhill was in 2002, and that was the only one this century. There are only 16 in all, and none of these are only for ash trees.

In order to help you see that we are being treated differently, I am asking for another piece of information

Recently an article appeared in the Sunday Times, which pointed out that you or one of your colleagues has provided information to central Government on trees in the street (a place where public amenity is more common than in my garden)

It appears that Harrow and Croydon have chopped down 7600 trees between them, and only replaced these with 2600.

If you need a copy of the article, please let me know.

I wonder if you could tell me what Harrow's contribution to this figure was, and which types of trees were felled.

I wonder also why you are planning to preserve trees of high importance and public amenity in my garden, while letting your colleagues get away with what the Sunday Times says that you have told the Government – which most tree officers would regard as vandalism.

I ought to point out that a survey has been done on trees in the property, and all trees are classified as Class C. Does this help?

Yours sincerely

Sent by email

8)


LONDON
Community & Environment Services
Andrew Trehern
Corporate Director



Mr Biddle
9 Manor Road
Harrow
HA1 2NZ

1st October 2007

Dear Mr Biddle

Tree Preservation Order (TPO) No. 882

Could you please send me your specified objections to the above TPO so I may address them before I present my report to Committee.

I thank you in advance for your cooperation and look forward to hearing from you in the very near future.

Yours sincerely

Russell Ball
Planning Arboricultural Officer (T: 0208 736 6092)

