

Committee: Planning Applications Committee

Date: 18th October 2018

Wards: Colliers Wood

Subject: Tree Preservation Order (No.732) at 45, 51 & 53 Myrna Close,
Colliers Wood, SW19

Lead officer: HEAD OF SUSTAINABLE COMMUNITIES

Lead member: COUNCILLOR LINDA KIRBY, CHAIR, PLANNING
APPLICATIONS COMMITTEE

Contact Officer Rose Stepanek: 0208 545 3815
rose.stepanek@merton.gov.uk

Recommendation:

That the Merton (No.732) Tree Preservation Order 2018 be confirmed without modification.

1. Purpose of report and executive summary

This report considers the objections & representations that have been made to the making of this tree preservation order. Members must take those into account before deciding whether or not to confirm the Order, with/without modification.

2. Details

- 2.1 On the 25 June 2018, the Council received a request from a local resident to make a tree preservation in respect of 3 trees that were reportedly in danger of imminent removal located in Myrna Close. A tree preservation order was made the same day in respect of 2 Tree of Heaven trees located in an amenity space in front of nos. 51 & 53 Myrna Close, and a Lime tree located within an amenity strip of land positioned between 2 car parking spaces in Myrna Close.
- 2.4 The Merton (No.732) Tree Preservation Order 2018 was made and this took effect on the 25 June 2018. A copy of the tree preservation order plan is appended to this report.

3. Planning history

- 3.1 Myrna Close was built in 1984. The land was formerly known as the Reliance (printing ink) Works, 105 Devonshire Road. These trees are thought to date from the landscaping of the original development.
- 3.2 On the 2 May 2018, a planning application (ref: 18/P1867) was submitted for the 'Application for lawful development certificate for the erection of a 1m high boundary to front of property.' The application included the proposal to remove the Tree of Heaven (listed as T3 in the Order) on the basis that it '...could be an obstruction to the erection of the garden wall and its roots might damage the surrounding access way.' The applicant is aware that under the Deed of Transfer of the Land there are restrictive covenants requiring the prior consent from the Council before erecting any fences and for the pruning/removal of any trees except in the course of good husbandry. Consent was granted (27/06/2018) for the erection of a 1 metre high fence, and the applicant was informed of the tree preservation order and the need to be observant of the recommendations under BS 5837:2012 'Trees in relation to design, demolition and construction'.

4. Legislative Background

- 4.1 Section 198 of the Town and Country Planning Act 1990 (as amended), empowers Local Planning Authorities to protect trees in the interests of amenity, by making tree preservation orders. Points to consider when considering a tree preservation order are whether the particular trees have a significant impact on the environment and its enjoyment by the public, and that it is expedient to make a tree preservation order.
- 4.2 When issuing a tree preservation order, the Local Planning Authority must provide reasons why the tree has been protected by a tree preservation order. In this particular case 8 reasons were given that include references to the visual amenity value of the trees in the area; that the trees should be protected in line with BS 5837:2012; that the trees have an intrinsic beauty; that the trees are visible to the public view; that the trees make a significant contribution to the local landscape; that the trees form part of our collective heritage for present and future generations; that the trees are an integral part of the urban forest; that the trees contribute to the local bio-diversity; and that the trees protect against climate change.
- 4.3 Under the terms of the provisional status of an Order, objections or representations may be made within 28 days of the date of effect of the Order. The Council must consider those objections or representations before any decision is made to confirm or rescind the Order.

5. Objections & representations to the Order

- 5.1 The Council received objections from 7 residents within the specified timescale for objections/representations to be made. Since that date, a further objection and 8 representations in support of the tree preservation order have been made to the Council. Given the strength of views with regards to this matter, it is suggested that all of the views are taken into account before reaching a decision.
- 5.2 The main objections to the Order relate to the Tree of Heaven listed as T3, although all comments have been summarised as follows:
 - That branches are shed during windy days;

- Fallen leaves are a slip hazard;
- A tree surgeon (who was employed to carry out work elsewhere) said the tree was rotten inside;
- Want to create play area with planting beneath;
- The tree is too tall;
- The roots from are damaging the access way;
- The canopy of the tree blocks out the street lamp, causing security concerns;
- Provides a hide-away and place for congregation and anti-social behaviour;
- Leads to extensive littering;
- Risk of damage to property/cars should the tree fall;
- The Council has acted in an undemocratic manner without carrying out a consultation exercise before making the tree preservation order;
- All 3 trees should be cut down and replaced with dwarf varieties;
- Roots are under the house;
- The Lime tree (T1) sheds a sticky substance;
- The street lamp is obscured by the Lime tree (T1);
- The trees are not well maintained.

5.3 The representations/supporters to the Order can be summarised as follows;

- Object to the destruction of the trees;
- Trees enhance the area;
- Trees absorb carbon dioxide and produce oxygen;
- Trees help give the area character;
- They are well established mature trees and their removal would leave no mature trees;
- The police are of the opinion that the trees should be left in place as this helps with security;
- The border should be tidied up and cared for.

6. Planning Considerations

6.1 The Tree Officer would respond to each of the objector's respective points as follows:

- All trees are capable of shedding branches in windy conditions. A photo was provided to demonstrate that a relatively small branch had been shed recently. A well maintained tree should reduce such incidences to a low risk;

- As with any tree, the fallen leaves should be swept up;
- The tree has been inspected and there are no obvious visible signs of decay;
- The planning application form for 18/P1867 makes no mention of the creation of a children's play area. In any event this could be done with the tree in place;
- The height of the tree is normal for the species. The tree is located approximately 9 metres from the nearest property and the canopy could be reduced in size to create a smaller form and be maintained as such. The canopy of the tree shows that the tree has been reduced in size on at least one previous occasion;
- There are two small areas of damage where roots have lifted the tarmac. One area of damage is maintained by the Council and the second area is to a communal footway. Both areas can be repaired without the need to remove the tree;
- The street light is located adjacent to the Lime tree. The canopy of T3 could be lightly raised to ensure light spillage from the street lamp reaches the foot path around the tree;
- The erection of the 1 metre high fence should eliminate this risk;
- The erection of the fence should help to reduce or eliminate this nuisance. The restrictive covenant (no.4) in the Deed of Transfer of the Land requires the land to be maintained. In its present condition the land appears to be untidy and neglected. This is more likely to attract undesirable littering;
- A healthy well maintained tree is less prone to sudden catastrophic failure than an unmanaged tree. The tree should be regularly inspected to ensure there are no identifiable problems which may require some form of arboricultural management;
- The Council has acted within its legal duties to make a tree preservation order where an immediate threat has been identified. The period for making objections/representations is where people's views can be considered on the matter;
- This Order is concerned with the existing trees. No condition for replacing the trees can be attached to an Order which has not been confirmed;
- According to the geological map for the area, the properties are founded on river terraces i.e. sands and gravel. Without any evidence to the contrary it can be assumed that there is a low risk of structural damage to the properties;
- The Lime tree sheds Honey Dew which is caused by aphids feeding on the sap of the tree. This is a common problem and should not be seen as a reason to remove a tree;
- The branches should be cut back from the lamp to prevent any obscuring of light;

- It is for the landowner to maintain the tree. If this Order is confirmed then a tree works application would be required in the future.
- Restrictive covenant (4) (c) of the Deed of Transfer of the Land states that the tree (T3 in the Order) should be maintained ‘..in the course of good husbandry..’ As such this Order seeks to reinforce the provisions of that document.
- No objections/representations have been received in respect of the Tree of Heaven listed as T2 in the Order.

7. Officer Recommendations

7.1 The Merton (No.732) Tree Preservation Order 2018 should be confirmed without modification.

8. Consultation undertaken or proposed

None required for the purposes of this report

9. Timetable

N/A

10. Financial, resource and property implications

The Order may be challenged in the High Court and legal costs are likely to be incurred by Merton. However, it is not possible to quantify at this time, and may be recoverable from the property owners if the Court finds in favour of the Authority.

11. Legal and statutory implications

The current tree preservation order takes effect for a period of 6 months or until confirmed, whichever is the earlier. There is no right of appeal to the Secretary of State. Any challenge would have to be in the High Court.

12. Human rights, equalities and community cohesion implications

N/A

13. Crime and disorder implications

N/A

14. Risk Management and Health and Safety implications.

N/A

15. Appendices – the following documents are to be published with this report and form part of the report Background Papers

Tree Preservation Order plan

16. Background Papers

The file on the Merton (No.732) Tree Preservation Order 2018
Government Planning Practice Guidance on Tree Preservation Orders and trees in conservation areas.

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