

Committee: Planning Applications Committee

Date: 15th November 2018

Wards: Hillside

Subject: Tree Preservation Order (No.730) at 10 Murray Road,
Wimbledon, SW19 4PB

Lead officer: HEAD OF SUSTAINABLE COMMUNITIES

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

Contact Officer Nick Hammick: 0208 545 3113
nick.hammick@merton.gov.uk

Recommendation:

That the Merton (No.730) Tree Preservation Order 2018 be confirmed, without modification.

1. Purpose of report and executive summary

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

2. Application Details

- 2.1 On the 19th May 2018, the council received a s.211 notification proposing, in part, the removal of a False acacia tree from the front garden of the property. The reason for the work is stated as: 'being required to allow for landscaping. Landscaping has been instigated by the fact that the roots of this tree are causing direct damage to both the driveway and garden wall.'
- 2.2 The tree was assessed by the tree officer and was found to be a False acacia of good vitality, with an approximate breast height diameter of 40cm.
- 2.3 In line with the regulations, a tree preservation order was made and is known as the Merton (No.730) Tree Preservation Order 2018 and this took effect on the 13th June 2018. A copy of the tree preservation order plan is appended to this report.

3. Background

- 3.1 00/T2332 – Notification to remove the False acacia - withdrawn by owner/agent.
- 3.2 13/T1819 – Notification to crown reduce the False acacia by 30%. Council raised no objections.
- 3.3 18/T2004 – Notification to remove the False acacia, neighbouring Holly & 2no. Bay trees in rear garden. Council raised no objections to removal of Holly & Bay trees.

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 10 reasons were given that include references to the visual amenity value of the tree in the area; that the tree has an intrinsic beauty; that the tree is visible to the public view; that the tree makes a significant contribution to the local landscape; that the tree forms part of our collective heritage for present and future generations; that the tree is an integral part of the urban forest; that the tree contributes to the local bio-diversity; and that the tree protects 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 & representation to the Order

- 5.1 The owner of the tree at 10 Murray Road objects to the Order on the grounds of:
 - The level of physical disruption/destruction that it is causing to its immediate surroundings, most particularly the fence and wall between their property and the street, as well as the driveway and adjacent flower bed. At present, the need for reconstruction is urgent.
 - This will be the third time in 12 years of ownership that they have been forced to spend significant sums on reconstruction of the front boundary, due to disruption caused by this tree.
 - Discussions with architects on the various possible structural solutions which could provide a more permanent front fence/boundary whilst still accommodating further growth and movement in the tree and its roots, have shown that the most practical solutions are expensive and also not guaranteed to be successful.
 - The False acacia is a non-native species well known for being highly invasive – the Royal Horticultural Society describes it as “vigorous” and notes “it has the potential to become as nuisance”.

- The tree has an attractive appearance when in flower in late spring, but for the rest of the year it is unremarkable.
- Neighbours have claimed this tree was not deliberately planted, but rather appears to be a sucker (or otherwise was self-seeded) from an older tree on an adjacent property, which was blown down in the 1987 hurricane.
- The tree is by a large margin, the tallest tree in this section of Murray Road.
- Prior to the recent resurfacing of the pavement in Murray Road, the roots had caused significant damage to the tarmac immediately outside the fence, which is likely to occur again; a potential hazard.
- It is intended to plant another, more attractive tree at the front of the property and happy to discuss this with Tree Officers.
- The owner has requested the necessary time to commission an appropriate consultant's report to support the case. The Council has confirmed agreement to this and has worked with the owner to provide the necessary time.

5.2 On 11th June 2018, the Council received an email from an opposite neighbour in support of the removal of the False acacia, on the basis that '...the tree has no particular merit, it sheds unsightly leaves and blossoms and, more importantly, is damaging the space around it.'

6. Planning Considerations

6.1 The tree officer visited the site on the 6th June 2018 to assess the tree works notification 18/T2004. Nothing obvious from a ground level inspection of this tree was observed by the tree officer to suggest that the trees' removal would be thought necessary in relation to the comments made by the owner.

6.2 Damage to a short section of low, 3-brick high wall bordering the front bed was observed. The tree officer wrote to the owner on the 25th June 2018 to suggest that a simply expediency would be to remove this short damaged section, after which, it might be either repaired or the structure removed completely. No obvious damage, as reported by the owner, to the substantial flags-laid driveway was noted.

6.3 A later site visit with the owner was proposed by the tree officer for the 17th September 2018, but nothing further was confirmed by the owner. Whilst it has not been possible to make arrangements to meet on site, conversation with the owner via email has been more successful.

6.4 The comments raised in relation to the False acacia being a non-native species, it not being a planted tree but rather a sucker or self-seeded from an older tree, and it being the tallest tree in this section of Murray Road are noted. However, these comments are not considered to be reasons for requiring the removal of a protected tree, or be strictly relevant for the purposes of confirming the Tree Preservation Order.

6.5 Recent resurfacing of the pavement has been undertaken by the Council's Traffic & Highway contractors. Any subsequent damage to the pavement that may occur as a result of tree roots will be repaired as and when intervention is

required. Again, this is not considered to be a reason for requiring the removal of a protected tree, or be strictly relevant for the purposes of confirming the Tree Preservation Order.

6.6 In response to the intention of replacement planting, such as an Amelanchier, Officers are of the opinion that the False acacia does not need to be removed. As such, there is no need to consider other replacement planting in place of an established protected tree in its current, appropriate position.

6.7 The Council have received no further submissions from the owner in support of their objection.

7. Officer Recommendations

7.1 The Merton (No.730) 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. No claim for compensation can be made for loss or damage occurred before an application for consent to undertake work on a protected tree was made, and the authority's liability is limited by legislation.

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.730) Tree Preservation Order 2018
Government Planning Practice Guidance on Tree Preservation Orders and trees in conservation areas.