

PLANNING APPLICATIONS COMMITTEE

26 SEPTEMBER 2019

Ward: Village

Subject: Tree Preservation Order (No.741) at 43 Lancaster Road,
Wimbledon, SW19 5DF.

Lead officer: HEAD OF SUSTAINABLE COMMUNITIES

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

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Recommendation:

That the Merton (No.741) Tree Preservation Order 2019 be confirmed without modification.

1. Purpose of report and executive summary

This report considers the objection that has been made to the making of this tree preservation order. Members must consider the objection before deciding whether or not to confirm the Order, with/without modification.

2. Planning History

- 2.1 In February 1991 planning permission and conservation area consent was granted for the demolition of the existing greenhouse and the erection of a single storey extension (Refs 90/P1184 & 90/P1185).
- 2.2 In December 2014, a pre-app meeting was held to discuss four options for the redevelopment of the site.
- 2.3 In November 2017, a planning application was submitted for the erection of a two storey dwelling house within part the rear garden (Ref 17/P4420). This application was withdrawn by the applicant on 13 December 2018.
- 2.4 Most recently, members of the Planning Applications Committee (July 2019) considered the proposal for the erection of a two storey extension, single storey rear and side extensions, provision of accommodation at basement level and conversion of roof space, including rear roof extension, erection of garage, new vehicular access onto Lancaster Road, together with associated landscaping works (ref: 19/P1743). Members were made aware of the issues surrounding the existing trees and were informed that as part of the consideration of the whole matter, a tree preservation order was being made in respect of the 'B' category trees on the site.
- 2.4 As a result of the planning process on this site, the Merton (No.741) Tree Preservation Order 2019 was made in respect of 7 trees on the site, and this took effect on the 2 July 2019. A copy of the tree preservation order plan is appended to this report.

3. Legislative Background

- 3.1 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.
- 3.2 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 9 reasons were given that include references to the amenity value of the trees to the area; that the Order is required as a supplement to 19/P1743; that the trees have an intrinsic beauty; that the Order is necessary to ensure the trees are protected during the course of site work; 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 contributes to the local bio-diversity; and that the trees protect against climate change.
- 3.3 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.

4. Objection to the Order

- 4.1 The Council has received an objection to the Order from an arboricultural expert acting on behalf of a local resident. The objection specifically relates to the Ash tree, listed as T7 in the Order.
- 4.2 The objections to the inclusion of T7 have been summarised as follows:
 - The tree is located in a section of land which is surrounded by private residential gardens and has limited to no public visibility;
 - The tree is already protected by the conservation area, by its inclusion in the Tree Protection Plans associated with 19/P1743, and 18/P3738, which relates to the neighbouring property;
 - The tree is an Ash tree and is susceptible to Ash Dieback disease;
 - The tree is imposing on the neighbour's garden, which is already bordered by protected trees.

5. Planning Considerations

- 5.1 The Tree Officer would respond to each of the objector's respective points as follows:
 - The Council received a large number of objections in connection with planning ref:19/P1743, and several of those related to the trees and the proposed loss of trees at the site. The rear garden supports a number of mature trees and the Council received several requests for a tree preservation order to be made. This was limited to the best specimens, which are all the 'B' category trees, and includes the Ash tree. The degree to which trees should be visible to the public is not defined by the guidance on such matters. However, the Ash tree can be glimpsed from

the surrounding roads, and its canopy merges with the other trees giving a strong sense of an abundance of greenery. Local Planning Authorities are advised to take into account the trees relationship and contribution to the character or appearance of a conservation area, and to protect trees that are associated with a grant of planning permission. There is also the risk of future development pressure on the land, as can be evidenced by the previous planning application ref: 17/P4420, which sought planning consent for a two storey detached dwelling house in the rear garden to the property. This proposed the loss of trees in the rear garden of the property. This was subsequently withdrawn by the applicant;

- The conservation area protection is limited in value. Tree Preservation Orders provide the maximum amount of protection for trees, particularly where there is a grant of planning consent on a property. A Tree Protection Plan provides arboricultural guidance on the form of protection a tree should have during a development and carries no legal weight in itself. The use of planning conditions and a tree preservation order provides the maximum amount of legal weight required to ensure a developer abides by the council's decision on an application and implements the method for protecting trees as shown on the Tree Protection Plan;
- There is no evidence that this tree is infected with Ash Dieback Disease, as can be seen by the Tree Survey information presented as part of ref. 19/P1743, and the objectors own Tree Survey provided as part of ref. 18/P3738. Should this disease ever affect this tree, then a replacement tree could be sought under the tree preservation order. This would not be the case if the protection was limited to conservation area status;
- The information presented by the objector's own tree survey shows that the Ash tree is located approximately 23 metres from the rear of the property, and that less than 5 metres of the canopy overhangs the garden. There was no proposal to remove the tree at that stage, and the Tree Protection Plan shows methods for the protection of this tree from any potential harmful effects from the development. There is a considerable distance between the tree and the property and it is could not be described as 'imposing'.

6. Officer Recommendations

- 6.1 The Merton (No.741) Tree Preservation Order 2019 should be confirmed without modification.

7. Consultation undertaken or proposed

None required for the purposes of this report

8. Timetable

N/A

9. 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.

10. 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.

11. Human rights, equalities and community cohesion implications

N/A

12. Crime and disorder implications

N/A

13. Risk Management and Health and Safety implications.

N/A

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

Tree Preservation Order plan

15. Background Papers

The file on the Merton (No.741) Tree Preservation Order 2019
Government Planning Practice Guidance on Tree Preservation Orders and trees in conservation areas.