

Planning Applications Committee 16 January 2020

Ward: Hillside

Subject: Tree Preservation Order (No.743) at Land at Leeward Gardens, Wimbledon, 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.743) 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 1969 planning permission was granted for the erection of 52 houses and 20 flats. (Ref. MER977/68). Planning condition (2) requires the following: 'The trees indicated on the deposited drawing No. 464/74C as "to be retained" shall be retained and maintained to the satisfaction of the Local Planning Authority together with any subsequent approved replacements thereof.'
- 2.2 The records show that a number of requests were received in 1968 from concerned individuals and organisations asking for a tree preservation order to be made in respect of the retained trees to maintain the green and pleasant nature of the locality.
- 2.3 On the 18/09/1968, the Merton (No.4) Tree Preservation Order 1968 took effect. This was later confirmed by the Minister of Housing and Local Government on the 18/03/1969.
- 2.4 Included within that Order, is a Walnut tree, which is listed as T91. This tree is marked on the map attached to the tree preservation order as being located in approximately the same position as the current Honey Locust tree that is the subject of this report. There would appear to be no records to show when the Walnut tree was removed, or why, and likewise there would appear to be no records as to whether the Honey Locust is a replacement tree as required by the tree preservation order regulations. However, in view of the planning condition above, it could be argued that this tree is subject to the planning condition, and is a replacement tree.

- 2.8 In September 2019, a local resident asked the Council to make a tree preservation order on the Honey Locust tree. The reason for this is: “The land is currently being offered for sale and I am concerned that the mature tree may be removed at short notice.” For the avoidance of any doubt in relation to the legal situation described above, and to avoid any delay where the Council has been made aware of a reported risk of the tree being removed at short notice, a new tree preservation order was made to protect this individual tree. This is known as the Merton (No.743) Tree Preservation Order 2019, and copy of the 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 8 reasons were given that include references to the visual amenity value of the Honey Locust to the area; that the tree has an intrinsic beauty; the tree makes significant contribution to the character and appearance to the local area; that the Honey Locust forms part of our collective heritage for present and future generations; that the Honey Locust is an integral part of the urban forest; that the Honey Locust contributes to the local bio-diversity; and protects 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 the Harrowdene Freehold Company (HFC) who are the registered landowner.
- 4.2 The objection has been summarised as follows:
- That the tree is described as being in “..the communal amenity open space adjacent to 37 Leeward Gardens.’ HFC dispute the description of the space, especially in the light of the area being confirmed as being in private ownership.
 - ‘The site has been maintained by Merton Council from the construction of Leeward Gardens c.1970 until sometime around late 2017/early 2018 when the Council ceased maintenance. During 2019 it has come to light that the site may belong to HFC due to an error in the adoption process when Leeward Gardens was constructed. This is in the process of being investigated and rectified. Merton Council have never formally communicated to HFC that they were ceasing maintenance or

that they considered HFC to be responsible for the site. Any tree orders should be postponed until after the ownership is resolved.'

- 'The tree was planted by Merton Council on land they now say that they do not own. If HFC are deemed the owners of the site then Merton Council had no right to plant the tree.'
- The Order provides no definition of what is meant by an 'amenity tree'.
- The tree is in poor condition.
- Again question the description of the tree being in a communal amenity space and forming part of the general landscape amenities, when it is now claimed the property is privately owned.
- Claim the tree is in poor condition and so it does not make a significant contribution to the area.
- Question the reason relating to the Order being made to 'safeguard the amenities of the local community' and that this would be true if the land was owned by Merton Council, rather than the present ownership being in dispute.
- The Council has not demonstrated there is any risk to the tree.
- HFC is aware of one resident in Leeward Gardens being concerned about the future of the tree and take the view that the imposition of the Order is of 'dubious value' and 'is an inappropriate response to that concern.'
- HFC ask the Council to engage with the residents of Leeward Gardens to '..jointly devise a plan for the future of this space.'

5. Planning Considerations

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

- The Honey Locust tree is situated upon a small unenclosed pocket of land. The openness of this small pocket of land can be best described as being, in the notional sense, a 'communal space' and that description does not imply any indication of actual legal ownership. A search of the Land Registry records confirmed that this small area was included in the land owned by the HFC.
- This is not a planning matter, and this concern should be raised with the other relevant sections within this department.
- According to the records held on the Council's Merton Maps computer programme, this tree is marked as a highway tree. However, no further information relating to this tree was available at the time of this report from the Leisure & Culture Greenspaces Team who have responsibility for highway/street trees. Whilst the ownership and maintenance of the land may be in dispute, it remains the case that the Council attached certain conditions to the development of Leeward Gardens, and planning condition (2) remains active and relates to the retention and

replacement of trees retained as part of the development. The importance placed on those trees was further reinforced by making a tree preservation order in 1968. The Honey Locust tree represents a continuance of the local green amenities that accords with the aims and intentions of the original planning consent.

- 'Amenity' is not defined in law, so Authorities can exercise their own judgement when deciding whether a tree merits protection. Orders may be used to protect trees if it is considered that their removal would have a significant impact on the local environment and its enjoyment by the public. Prior to the making of this tree preservation order, the legal status of this tree was unclear and there remained the potential risk of this tree being removed at any time. This new tree preservation order will remove any such doubt and shall make the tree subject to the current regulations. As this tree is considered to be a significant tree in the context of its location and visibility, it is deemed to be the correct use of the Act.
- The tree appears to be reasonably good health. Should it ever be found that the tree needed to be removed at any time, then a replacement tree could be secured through the tree preservation order.
- This dispute with the Council about the ownership/maintenance of the land in question is not a planning matter, and this should be raised with the other relevant sections within this department.
- As above. The objector has not presented an arboricultural case to support the repeated claim that the tree is a 'poor specimen'.
- The Honey Locust tree is located in a central position within this area of Leeward Gardens and is fully visible to all of the surrounding properties, as well as being a welcome source of greenery for the general public. This tree preservation order protects this amenity for those residents and for the general public. Ordinarily, a tree preservation order is intended to be used on privately owned trees, rather than highway trees owned by the Council. However, for the reasons explained above, this tree preservation order removes any doubts as to who has responsibility for the land, and therefore the tree.
- The resident who asked for the tree preservation order identified the risk. The Government guidelines advise that it is not necessary for there to be an immediate risk for there to be a need to protect trees.
- For all of the reasons stated above, this tree preservation order is considered to be the correct and appropriate response to a vulnerable tree.
- This matter would need to be discussed with the relevant sections within this department.

6. Officer Recommendations

- 6.1 The Merton (No.743) 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.743) Tree Preservation Order 2019
Government Planning Practice Guidance on Tree Preservation Orders and trees in conservation areas.

This page is intentionally left blank