

Committee: Planning Applications Committee

Date: 16th June 2022

Agenda item:

Wards: Village

Subject: Objection to the Merton (No.773) Tree Preservation Order 2022 at 296 Coombe Lane, Raynes Park, SW20 0RW.

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Recommendation:

That the Merton (No.773) Tree Preservation Order 2022 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 August 2021, a planning application was submitted for the 'Demolition of dwelling house and erection of three new dwelling houses'. This case (planning ref: 20/P2235) was considered by the members of the Planning applications Committee at their meeting on the 19 August 2021. Members resolved that the application be granted permission subject to conditions. Planning condition 9 requires the protection of the retained tree as part of the approved development.
- 2.2 In November 2021, an application to discharge various planning conditions was submitted. This included an Arboricultural report including a tree survey and Arboricultural Method Statement for the protection of the retained Manna Ash tree on the site.
- 2.3 As the single dominant tree on the site that did not have any form of formal protection, the tree officer considered that as this tree was to be retained as part of the approved development, it should be given protection in the form of a tree

preservation order. On the 1 March 2022, the Merton (No.773) Tree Preservation Order 2022 took effect.

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 Manna Ash tree 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 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 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 a local resident.
- 4.2 The objection has been summarised as follows:
 - That the tree is not a Manna Ash but an Ash tree.
 - That the former owner of the property used to prune the tree on a regular basis. The tree is now neglected and has been allowed to outgrow its surroundings.
 - Had hoped the developer would remove the tree and plant a slow-growing ornamental tree.
 - Due to neglect the tree is now tall and a potential hazard should it fall.
 - The roots of the tree are pushing up the flagstones to the neighbouring property and it creates a mess every October/November.
 - The tree overhangs the garden and the car is affected by bird droppings and debris falling from the tree.
 - That the Order should be revoked in favour of allowing the developer the freedom to do whatever he pleases.

5. Planning Considerations

- 5.1 The Tree Officer would respond to each of the objector's respective points as follows:
 - The arboricultural report submitted under 21/P3992 identifies this tree as a Manna Ash. The tree has been given a 'B' category rating under the BS

5837:2012 that is a tree of moderate quality with an estimated life expectancy of at least 20 years. The report also provided the following appraisal of the tree 'This tree does merit retention due to High Capital Asset Valuation of Amenity (CAVAT).' The Council's tree officer agrees that this is a Manna Ash (*Fraxinus ornus*). It is the policy of this Council (DM 02) to ensure that trees of significant amenity value are retained as part of a development. In this case, this is a visually prominent tree that makes a significant visual contribution to the local environment. As such the use of a tree preservation order to protect this tree is an appropriate use of the planning legislation.

- A tree preservation order does not normally prevent the appropriate arboricultural management of a tree.
- The objector could have raised this as an issue for consideration at the planning application stage. This is now an approved development requiring the retention of the Manna Ash tree.
- The tree survey found only the presence of minor deadwood. The tree appears to be in reasonably good health and there would appear to be no visual indicators to support the suggestion of a potential hazard.
- The flag stones could be re-laid. As a deciduous tree, the shedding of leaves in autumn is a natural biological process that does not justify the removal of a tree. However, the objector may wish to consider applying for permission to prune back the overhanging branches.
- The mild nuisance of bird droppings and falling debris could be dealt with by applying for permission to prune back the overhanging branches.
- The tree preservation order should not be revoked for all of the reasons set out in this report.

6. Officer Recommendations

- 6.1 The Merton (No.773) Tree Preservation Order 2022 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.773) Tree Preservation Order 2022
Government Planning Practice Guidance on Tree Preservation Orders and trees in conservation areas.