

## **Committee:** Planning Applications Committee

**Date:** 16<sup>th</sup> March 2023

**Agenda item:**

**Wards:** Cannon Hill

**Subject:** Objection to the Merton (No.784) Tree Preservation Order 2022 at 12 Thurleston Avenue, Morden, SM4 4BW.

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### **Recommendation:**

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That the Merton (No.784) Tree Preservation Order 2022 be confirmed without modification.

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#### **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 On the 27 October, the Council received a request from the 'Friends of Cherrywood' for a tree preservation order to be made in respect of the Oak tree located in the rear garden of 12 Thurleston Avenue. The reason for the request was given as: 'Cherrywood is a protected nature reserve and a similar oak in a nearby garden has been felled.'
- 2.3 Cherry Wood is a small, mainly oak woodland lying in suburban Morden and within an area of housing developed in the 1930's with an additional small remnant of the wood now isolated within the grounds of Hillcross Middle School. Prior to the 1930's Cherry Wood covered a more extensive area and the Oak tree under consideration is thought to be an original tree belonging to that woodland, but has since been retained as part of the development of Thurleston Avenue.
- 2.4 The Oak tree is a mature specimen which is visible from Thurleston Avenue and Shaldon Drive. The Oak tree is positioned behind an outbuilding and the

majority of the canopy overhangs the roof of the structure. On the 17<sup>th</sup> November 2022, the Merton (No.784) Tree Preservation Order 2022 took effect. A 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 tree has 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 visual amenity value of the tree to the area; that the tree has an intrinsic beauty; that the tree forms part of Cherry Wood; that the tree makes a 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.
- 3.4 If the tree preservation order is not confirmed, the Oak tree can be removed.

### **4. Objection to the Order**

- 4.1 The Council has received an objection to the Order from the resident of 12 Thurleston Avenue.
- 4.2 The objection has been summarised as follows:
  - That the tree has dead branches and these are regularly shed especially in windy conditions, and this causes a concern over risks to members of the family.
  - That the tree preservation order will present difficulties in being able to manage the tree.
  - That the tree preservation order will create a financial burden to maintain the tree at their expense.
  - The tree preservation order will devalue the property.
  - The tree preservation order will impose unnecessary restrictions severely limit their options to deal with the tree in timely manner.

### **5. Planning Considerations**

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

- The planning regulations do allow for certain exceptions to the Act and these include the removal of dead wood. The exceptions allow removal of dead branches from a living tree without prior notice or consent.
- As above
- As above
- The tree preservation order does not add any greater financial burden than if the tree were being managed without a tree preservation order. Any other work to the tree must be submitted using a Tree Works Application Form, and this is a free service. The timing of the submission of the form is entirely up to the resident or their agent and the consent is valid for 2 years.
- Research has shown that trees can add to the value of the property. Their presence promotes greenery that is appreciated by new homeowners. This Oak tree is located at the bottom of the garden, behind an existing outbuilding and therefore its location should not place any unreasonable limitations in terms of any future home improvements.
- This has been covered in the first point.

## **6. Officer Recommendations**

- 6.1 The Merton (No.784) 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.784) Tree Preservation Order 2022  
Government Planning Practice Guidance on Tree Preservation Orders and trees in conservation areas.