

Committee: Planning Applications Committee

Date: 15th October 2015

Agenda item:

Wards: Dundonald

Subject: Tree Preservation Order (No.676) at 95 Merton Hall Road, SW19

Lead officer: HEAD OF SUSTAINABLE COMMUNITIES

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

Contact Officer Rose Stepanek: 0208 545 3815
rose.stepanek@merton.gov.uk

Recommendation:

That the Merton (no.676) Tree Preservation Order 2015 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 take the objection into account before deciding whether to confirm the Order, with the recommended modification, or to permit the removal of the tree based on the concerns raised by the objector.

2. Details

2.1 On the 17 April 2015, a s.211 notice was submitted to the Council proposing the removal of a Lime tree located in the rear garden of 95 Merton Hall Road. The applicant provided the following information:

Very large Lime tree – fell due to size causing excessive shading over grass and plants below. Sticky sap now coming onto the trampoline. Will replant with

an olive tree all ready to plant. We had the tree pollarded a few years ago but the size is now far too big for the garden.'

- 2.2 No objections or representations were received in connection with this notification.
- 2.3 The case officer inspected the tree and noted that it is a good, healthy and mature specimen, and which is clearly visible from the nearby Henfield Road and which provides a significant level of visual amenity value to the local environment. The tree is also clearly visible from the front of the property. The olive tree referred to is a small specimen (approx. 1 metre high) currently growing in a plant tub.
- 2.4 The case officer took the view that the reasons proposed for the removal of the tree did not outweigh the visual amenity value provided by the tree and that the tree should be protected from removal.
- 2.5 As the property is located in the Merton Hall Road Conservation Area, it was decided that a tree preservation order should be made to protect the tree. The Merton (No.676) Tree Preservation Order 2015, and this took effect on the 18 May 2015. A copy of the plan identifying the location of the tree (referred to as T1) is appended to this report.

3. Relevant History

- 3.1 In 2009, there were 3 Lime trees in the rear garden of the property and these were all of a similar age and size. A s.211 notice was submitted proposing the removal of the 2 trees located on the rear boundary and to be replaced with one feature tree. The third Lime tree (the subject of this tree preservation order) was to be re-pollarded. The tree officer raised no objection to this proposal and the tree work was allowed to take place on the understanding that a new tree would be planted within one year from the date of the council's decision letter. However, it should be noted that as the two Lime trees were in a healthy condition, the council would be unable to enforce the planting of the replacement tree.

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 is 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.
- 4.2 When issuing a tree preservation order, the Local Planning Authority must provide reasons why the trees have 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; that the tree has an intrinsic beauty; that it 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; and that the tree contributes to the local bio-diversity; and protects against climate change.
- 4.3 This Order is effective for a period of 6 months. If the Order is not confirmed within that period, then the provisional protection afforded by Section 201

ceases to have effect. 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. This Order remains valid, in its temporary state, until the 17 November 2015.

5. Objection to the Order

5.1 The council received an objection to the Order from the property owners.

5.2 The objection is summarised as follows:

- The tree does not have an intrinsic beauty, and is overgrown and out of proportion to the garden. It discharges sap and is the size of the tree is detrimental to the growth of other trees, plants and grass in the garden;
- Other trees in neighbouring gardens are more visible;
- The removal of the tree would add to the environment of the garden and would allow the other vegetation, including a lilac and a new tree, to flourish;
- The tree is out of proportion and has grown greatly since the re-pollarding of 2009. The tree is approx. five times larger than the street trees in Merton Hall Road and other roads ;
- Are committed to planting another tree in its place. If all the street trees grew to this size this would cause significant structural damage to council streets and kerbs;
- Are committed to local bio-diversity and climate change issues which is why a different tree is proposed.

6. Planning Considerations

6.1 Members should take into account the advice set out in paragraph 4.1 of this report and bear in mind that the essential purpose of a tree preservation order is to protect the visual amenities of a local area.

6.2 The tree officer would respond to each point in respective order:

- The tree is a good healthy example of the species. The tree is located adjacent to the boundary fence with no. 97 Merton Hall Road, towards the lower end of the garden. It is positioned approximately 19 metres from the rear of the property. The sap is known as Honey Dew and is caused by aphids feeding on the leaves of the tree. The size of the tree could continue to be managed to maintain a smaller canopy. The relationship of the tree to the garden is no different to any other garden that supports a mature tree in that this should be taken into account when planting other trees and shrubs. The shedding of leaves etc., onto the grass should not be seen as a reason in itself to justify the removal of a mature tree;
- When viewed from Henfield Road, two other trees located in a neighbouring garden are clearly visible, but this tree can be clearly distinguished from those other trees;

- The lilac is at present a small shrub that has been planted in a shady location beneath the canopy of Lime tree and other vegetation. The new tree referred to is a young Laburnum which has been planted close to the same boundary and the presence of other higher growth is likely to inhibit the satisfactory growth and formation of the canopy of this tree;
- The street trees are managed as pollards for reasons of their position in the street and to avoid issues relating to damage to any immediate surrounding structures and conflict with the use the highway and footway. This is a completely different form of management for different reasons and which bears no relation to the management of privately owned trees. The Lime tree is larger than the street trees, but can be managed to be a smaller size if so desired;
- Noted and as commented on above;
- Noted, however the present tree is a native mature example of the species with many years ahead of it. This tree is approximately 60 years old. A new tree, of an as yet unknown species, may not ever reach this size or level of visual prominence in the local area.

7. Officer Recommendations

- 7.1 The Merton (No.676) Tree Preservation Order 2015 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.

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.676) Tree Preservation Order 2015
Government Planning Practice Guidance on Tree Preservation Orders and trees in conservation areas.

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