

Committee: Planning Applications Committee

Date: 11th August 2016

Wards: Dundonald Ward

Subject: Tree Preservation Order (No.697) at 201 Kingston Road,
Wimbledon SW19 3NG

Lead officer: HEAD OF SUSTAINABLE COMMUNITIES

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

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Recommendation:

That the Merton (No.697) Tree Preservation Order 2016 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 or not to confirm the Order, without modification.

2. Details

2.1 On the 15 April 2016, a s.211 notice was submitted to the council, proposing the removal of a large mature Yew tree located in the rear garden of 201 Kingston Road, Wimbledon, SW19 3NG. The applicant provided the following reasons for the submission:

- The Yew tree is too close to the house and too large;
- Causes excessive shading across the whole garden;
- Intention is to create a side extension for elderly father and, in time, supported living for a child with registered special needs;
- Tree is poisonous for children (the applicant has 3 children below 10 years of age)
- Intention is to plant a line of Yew hedging to the front boundary of the property.

2.2 The property is located in the John Innes (Wilton Crescent) Conservation Area.

2.3 The Tree Officer assessed the s.211 notice and determined that the Yew tree is a very prominent specimen in the street scene and that its loss would have a significant detrimental effect on the visual amenities presently enjoyed by the local residents. In order to protect the tree from removal a tree preservation order was made, and this is known as the Merton (No.697) Tree Preservation

Order 2016. The Order took effect on the 25 May 2016. A copy of the tree preservation order plan is appended to this report.

3. Relevant History

- 3.1 There have been 3 previous occasions (application refs: 99/T2399; 06/T2124; 14/T0397) where a s.211 notice has been submitted for the works to the Yew tree. The work has been limited to the pruning of the tree, and has on each occasion been found acceptable.
- 3.2 On the 5 May 2016, a planning application was submitted proposing the: 'Demolition of garage and erection of single storey side extension, and erection of a single storey rear and side wraparound extension'. Under question 15 (Trees and Hedges) the applicant confirmed that there is/are trees and hedges on the proposed development site (planning application no: 16/P1889). However, the details of the proposals contain no information concerning the Yew tree, or any other vegetation which may be affected by the proposed development. The applicant's agent was informed by email dated 1 July 2016 that further information in the form of an arboricultural impact assessment and tree survey was required in order to properly assess the submitted planning application.

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 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.
- 4.2 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 10 reasons were given that include references to the visual amenity value of the area; that the Yew tree has an intrinsic beauty; that is clearly visible to the public view; that the Yew tree makes a significant contribution to the local landscape; that it forms part of our collective heritage for present and future generations; that it is an integral part of the urban forest; that it contributes to the local bio-diversity; and that it 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.

5. Objection to the Order

- 5.1 On the 29 June 2016, the Council received an objection to the Order from the property owner.
- 5.2 The objection to the Order is as follows:
 - That the property owner had checked the council's list of tree preservation orders and noted its absence from the list. That the Yew

tree had been brought to the council's attention in the past, and that a review of the trees in the area would have determined which trees should be given a tree preservation order;

- The objector questions the visibility of the tree and argues that it cannot be seen by the general public in Kingston Road or Kingswood Road except from very limited vantage points. Visibility of the tree is also obscured by the existing high boundary fence;
- That the council should have given consideration to placing a tree preservation order on the Yew tree as part of the assessment of the area and which was published in November 2005 as the Character Appraisal of the John Innes Conservation Area. Similarly, a Supplement to the Character Assessment dated September 2010 includes an undertaking to carry out a tree survey and implement tree preservation orders as appropriate;
- The Yew tree is disproportionately large for the garden;
- The objector has recently purchased the house and this was selected on the basis of submitting a planning application to extend the house to cater for 3 adopted children and an increasingly infirm father. The plans include wheelchair access and an opportunity to restore the house, including the provision of extending the existing Yew hedging around the perimeter of the property.
- The applicant's architect has also noted the proximity of the tree to the property and is concerned about the risk of damage to the property, as well as the potential for the roots of the tree to cause damage to any nearby drains.

6. Planning Considerations

6.1 The Tree Officer would respond to each respective point as follows:

- It is a matter of fact that the tree is not included in the list of confirmed tree preservation orders within the borough. It is not clear how or where the tree has been presented to the council in the past, other than the tree work applications referred to above. On those occasions, the work was found acceptable and was allowed to be carried out. The question of a 'review of the trees' is answered below;
- The Yew tree can be clearly seen from Kingswood Road. Whilst views of the tree may be marginally diminished from Kingston Road, it remains the case that the tree is a significant feature in Kingswood Road;
- The document referred to is the 'John Innes (Wilton Crescent) Conservation Area Management Plan, which sets out a number of objectives which accept that change is a fact of modern life and this publication assesses how to approach that change. One of the aspirations of the document is to prepare a Tree Management Strategy which would be aimed at street trees, trees in parks and open spaces, as well as privately owned trees. This could then lead to recommendations for tree preservation orders. This could be seen as an additional approach to identifying trees which are considered to have special merit in conservation area, but it does not replace the need to consider the

outcome of a s.211 notice and to decide whether the work should be prevented from taking place by making a tree preservation order;

- The Yew tree is a large specimen. However, there is no reason why the tree work that has been undertaken in the past cannot continue as the most appropriate method of arboricultural management for this tree;
- The Land Registry records show that this property was purchased on the 7 April 2016. Whilst the aspirations behind the planning application are noted, it is a matter for the council to determine whether the benefits of the development outweighs the tree's amenity value. The planning application has yet to be determined. However, if members agree with this officer's recommendations, then it is likely that the proposed development shall have to be amended/modified to ensure the tree is not harmed by the form of development. The provision of hedging would be an attractive addition to the property, but this would not be an adequate substitute for the Yew tree;
- The architects concerns are noted. However, it is also noted that there is no actual damage to the property or drains. Whilst the possibility of this arising in the future cannot be ruled out, this would have to be properly assessed once the evidence has been presented to the council for its consideration and determination.

7. Officer Recommendations

- 7.1 The Merton (No.697) Tree Preservation Order 2016 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.697) Tree Preservation Order 2016
Government Planning Practice Guidance on Tree Preservation Orders and trees in conservation areas.

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