

Committee: Planning Applications Committee

Date: 21st September 2017

Wards: Wimbledon Park Ward

Subject: Tree Preservation Order (No.710) at The Woodman Hotel, 222 Durnsford Road, Wimbledon Park, SW19 8DR

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.710) Tree Preservation Order 2017 be confirmed, but be modified by the removal of the tree numbered T7.

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 In April 2017, the council received a requests from several local residents' for a tree preservation order to be made in respect of trees located within the grounds of The Woodman Hotel, 222 Durnsford Road, Wimbledon Park, London, SW19 8DR. The reasons put forward for the request are as follows:

- Residents' became aware that the pub had been sold in mid-April, and concerns began to be raised about the future of the building as well as the trees located within the grounds of the pub;
- Immediately after this, the residents' were alarmed to find that 12 trees had their bark removed, a practice referred to as girdling (this is more commonly

known as ring barking, and there is more on this subject below). One resident noted that this work had been carried out during the night time ;

- One of the resident's raised this issue with the Wimbledon Park Resident's Association;
- This issue was posted on the 'Haydon's Road North Community Site';
- The residents' are concerned about the actions of the new owner ahead of an anticipated planning application, with one resident describing the damage to the trees as 'wanton destruction' ;

2.2 The Woodman Hotel is thought to have been built around 1867 and is considered to be the longest running business in the area, and the only public house in Wimbledon Park. The council's planning records show that the building was modified into its present architectural style, including the addition of the conservatory, around 1900.

2.4 The Woodman Hotel is located in an area of mixed industrial, commercial and residential use.

2.3 The Tree Officer inspected the site and its trees and noted that all but two of the existing trees had been ring barked. Despite this damage, it was determined that although their lifespan had been artificially shortened, the trees did still provide a valuable source of visual amenity value for the local area. The trees provide a welcome green refuge in a very busy area that is heavily trafficked by vehicles using the Durnsford Road Bridge. It was decided that 12 of the trees on the land should be protected by a tree preservation order. This is known as the Merton (No.710) Tree Preservation Order 2017, and took effect on the 20 April 2017. A copy of the tree preservation order 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 trees have 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 trees in the area; that the trees have an intrinsic beauty; that they are visible to the public view; that the trees make a significant contribution to the local landscape; that they form part of our collective heritage for present and future generations; that they are an integral part of the urban forest; that they contributes to the local bio-diversity; and that they protect 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 On the 23 May 2017, the Council received an objection to the Order. An arboricultural report (including a tree survey) is appended to that letter of objection.

4.2 The objection to the Order is summarised as follows:

- That the tree preservation order (TPO) does not comply with current guidance and best practice or truly represent the value and condition of the trees;
- The reasons given for making the TPO do not adequately justify the imposition of the TPO and protects trees of no future value;
- Local authorities are granted powers to make TPOs without any right of appeal or oversight. It is, therefore, particularly important that these powers are used responsibly and appropriately. For these reasons, I believe the TPO is not justified, not appropriate and against government guidance and should not be confirmed.

The arboricultural report provides the following information:

- The arboricultural expert visited the site twice; on the 31 March and on the 12 May 2017, to assess the trees;
- There is currently no public access and the land is not available for recreational use;
- The planning policy guidance on TPOs is provided in a summarized form;
- Only the Yew tree (T1 in the Order) is considered to be of good form and has been given a B1/B2 category as assessed under the BS 5837:2012 – Trees in relation to design, demolition and construction - Recommendations;
- The other trees have no significant life expectancy as they have been ring barked. Most of them will be dead in 1-2 years. There was no TPO in place when this work was carried out. The trees were not removed at this time due to the bird nesting season;
- Ring barking is a common method of killing trees;
- None of these trees are rare or have any significant cultural value;
- Two Ash trees have been historically topped at low level and are now of low to poor value when using the BS5837 methodology;
- The TPO includes an Ash shown as two trees when it is likely to be two stems of the same tree. Ash trees are not expected to survive more than 5 – 10 years due to the spread of ash dieback disease. This tree has been given a C1/C2 category under the BS5837 methodology, and is noted as poor physiological condition due to die back in the canopy and is thought to be in decline;
- The remaining trees have been given a U category under the BS5837 methodology. These trees are described as being in fair overall condition, but all have been ring barked.

5. Planning Considerations

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

- Under the National Planning Policy Framework (NPPF), the expediency of a TPO can be determined if the authority believes there is a risk of trees being felled, pruned or damaged in ways that would have a significant impact on an area. The TPO may be made if the authority believes certain trees are at risk as a result of development pressures, or as a precautionary measure if there have been changes in the ownership of the land. Although amenity is not defined in law, it is principally about the visibility of the trees and whether their removal would have a significant negative impact on the local environment and its enjoyment by the public. The officer considered their visibility and importance in this particular landscape and other factors such as value to nature and for helping to combat climate change. The factor of ring barking was taken into consideration and is further commented on below. The TPO was determined to be expedient and an appropriate response to a proven threat (the ring barking) to the trees;
- The reasons for the making of the TPO provide a satisfactory level of information which accords with the advice provided by the NPPF;
- This is not correct. Whilst there is no provision for an appeal against a TPO whilst it is in its temporary unconfirmed form, this changes once the Order has been confirmed. Thereafter the regulations make provision for an appeal process in the event of a refusal of planning consent for the removal of any of the trees. And the Order can be challenged in the High Court;
- Noted;
- Noted;
- Noted. This report has set out the considerations which were taken into account before a decision was made to make a TPO;
- The Yew tree is a good example of the species. However, the reference to the BS 5837 is, in this instance, erroneous as this is not a recognised method for assessing the visual amenity value of a tree within the Town & Country Planning (Tree Preservation)(England) Regulations 2012. Its purpose is to assess trees as part of the planning process leading up to a development of a particular site;
- The Arboricultural Practice Note (APN13) which is produced by The Tree Advice Trust, advises that the practise of ring barking consists of the removal of a complete band of bark from around the stem of a tree. In effect, this separates the canopy from the roots of the tree and prevents the tree from transporting food to the roots. The roots can only survive until the stored carbohydrates are used up and this could take several years in a mature tree. The consequential death of the stems and branches may not be apparent for some time. The APN13 advises that trees are sometimes ring barked intentionally and that this can form part of a planned tree management. As such, those trees that have been ring

barked are capable of living for at least 1 – 2 years and can therefore continue to provide visual amenity while they remain alive;

- According to the APN 13 this is not a common practice;
- The TPO makes no reference to any of the trees having a rare or significant cultural value;
- The two Ash trees listed as T2 and T3 in the TPO have been topped in the past, but have recovered to form new canopies which provide visual amenity to The Crescent. Both trees are described in the tree survey as being in fair/poor condition as well as having been ring barked. Neither tree is described as being in a hazardous or dangerous condition, thereby needing immediate removal. It is more than likely these trees could remain as part of the collective until the ring barking has taken full effect ;
- It is agreed that this Ash tree is comprised of two stems on the same tree. In this regard, this tree should be listed as a single tree in the Order, and it is proposed to amend the Order by deleting any reference to T7. Although the Ash dieback Disease (also known as Chalara Ash Dieback) is a worrying development in the range of new diseases which affect trees in the UK, this tree is not presenting any symptoms associated with the disease. This tree has not been ring barked. The side stem (which has been referred to as T7) is becoming defoliated and may need to be removed. The main tree (listed as T8) currently has a healthy canopy. Whilst there may be some form of mechanical root damage to this tree, this could continue to be assessed and monitored as part of a tree management plan;
- All of these trees continue to provide visual amenity value. The 'U' category is reserved for trees that are unsuitable for retention on a site that is being assessed with a view to a development. The assessment made under BS5837 relates to trees that are considered to be in such condition that they cannot realistically be retained as living trees in the context of the current land use for longer than 10 years. The criteria used for determining this includes trees that have a serious structural defect which may lead to collapse; trees in an irreversible decline; trees infected with pathogens of significance; or very low quality trees which are suppressing the growth of trees of better quality. There is nothing in the condition notes of the tree survey that meets with this criteria other than the fact these trees have been ring barked. In this officer's opinion, these trees would have ordinarily merited a 'C' category and the council would have expected a prospective developer to retain these trees, unless efforts were made to mitigate against such losses by planting new trees as part of a proposed development. Such arrangements would have been considered and determined as part of the planning process.

6. Officer Recommendations

- 6.1 The Merton (No.710) Tree Preservation Order 2017 should be confirmed, but be modified by the removal of T7.

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.710) Tree Preservation Order 2017
Government Planning Practice Guidance on Tree Preservation Orders and trees in conservation areas.