

Committee: Planning Applications Committee

Date: 26 APRIL 2018

Wards: Village

Subject: Tree Preservation Order (No.718) at 13 Chester Road,
Wimbledon, SW19 4TS

Lead officer: HEAD OF SUSTAINABLE COMMUNITIES

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

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Recommendation:

That the Merton (No.718) Tree Preservation Order 2017 be confirmed, without modification.

1. Purpose of report and executive summary

This report considers the objections that have been made to the making of this tree preservation order. Members must take the objections into account before deciding whether or not to confirm the Order, without modification.

2. Application Details

- 2.1 On the 15 November 2017, the council received a s.211 notification proposing the removal of a Silver Birch tree from the front garden of the property. This submission was later confirmed to relate to a mature Purple Beech tree. The reason for the work is stated as: 'fell because of hazard posed to humans by excessive birds droppings, including pigeons. The tree has no amenity value whatsoever.'
- 2.2 The tree was assessed by the tree officer and was found to be a mature Purple Beech tree which is a mature and sizeable tree. There is a mature Beech tree located in the footway nearby, and both trees are a significant visual feature in the local area. The matter of bird droppings was not considered to be a sufficient justification to remove this tree.
- 2.3 In line with the regulations, a tree preservation order was made and is known as the Merton (No.718) Tree Preservation Order 2017 and this took effect on the 6 November 2017. A copy of the tree preservation order plan is appended to this report.

3. Background

- 3.1 09/T0131 – Planning consent granted for the Purple Beech tree to be pruned and crown reduced.
- 3.2 15/P0870 – Recommended a grant of planning consent (with conditions) for the erection of a part single, two storey rear extension and new front porch. Due to the number of objections received to this application, this case was due to be referred to the Planning Applications Committee.
- 3.3 15/T3283 – Planning consent granted for the Purple Beech tree to be crown reduced and crown thinned.
- 3.4 15/P3112 – Planning consent (with conditions) granted for the erection of a part single, part two storey rear extension and single storey front porch.
- 3.5 17/T1070 – Planning consent granted for the Purple Beech tree to be reduced back to the previous pruning points.
- 3.6 17/T3849 – Planning consent refused for the removal of the Purple Beech 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 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.
- 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 tree in the area; that the tree has an intrinsic beauty; that the tree 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; that the tree is an integral part of the urban forest; that the tree contributes to the local bio-diversity; and that the tree protects against climate change.
- 4.3 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.

5. Objections & representation to the Order

- 5.1 On 19 November 2017, the Council received one email from a local resident in support of the preservation of the Purple Beech tree. On the 4 & 7 December 2017, the Council two objections to the tree preservation order.
- 5.2 The neighbour at 15 Chester Road objects to the Order on the grounds of:
 - The tree causes an on-going nuisance by bird droppings and risk to the health of property owners young children;

- The tree is large and over-bearing and reduces light to the property;
- The trees roots may present a risk to the property;

5.3 The owner of the tree objects to the Order on the grounds of:

- Disagrees with the Council's claim that the tree has an intrinsic beauty or provides visual amenity;
- Disagrees with the Council's claim that the loss of this tree would have a detrimental impact on the environment ;
- The main cause of concern relates to the number of birds, and particularly pigeons, which rest of the tree and produce a large quantity of bird droppings. The owner is mainly concerned with the health risk associated with bird droppings, particularly in relation to his two young children. The youngest is under 2 years of age and suffers from allergies and severe gastric reflux. Their specialist stated that '..it would not be unheard of that the reflux may have originated, or be made worse by contact with or ingestion of pigeon excrements.'
- That due to the nuisance caused by the bird droppings, the owner has to jet wash his driveway on a weekly basis; the roof of his car has been damaged; and he has had to buy two parking permits even though he bought the house for its off-road parking provision. The owner considers the tree is causing a costly and unnecessary financial burden.

5.2 The supporter of the tree preservation order takes the view that birds will sit in trees and this, therefore, will lead to droppings beneath a tree. If this reasoning is taken as a valid argument to justify the removal of a tree, then this could be applied to all trees. Note was made that the applicant incorrectly identified the tree as a Silver Birch tree and the application should have been dismissed on this basis alone.

6. Planning Considerations

6.1 A site meeting was held between the Tree Officer and the owner of the tree and the results of this discussion are incorporated into the response to each of the respective points as follows:

The neighbour at 15 Chester Road:

- This comment mirrors that of the tree owners and is dealt with below.
- The Purple Beech tree is a mature specimen which has since 2009 been managed in a reduced size and form. The canopy of this tree in combination with the canopy of the street tree is likely to reduce the amount of light available to the property from the early morning to approx. midday. From there on, the property receives full sunlight.
- Any risk to the property would need to be quantified by an expert. The local geology for this area identifies this as high level terraces consisting of gravels and sands. It is unlikely that this tree poses a risk to the property.

The tree owner at 13 Chester Road;

- The Purple Beech tree is a large mature specimen which can be readily observed in the front of the property.
 - This and the adjacent Beech tree located in the public footway are the only two trees of any great visual significance in this part of Chester Road. They are important feature trees in this residential area.
 - On-line research into bird droppings suggests that the most significant problem relates to feral pigeons, particularly those that have taken up residence around a vacant building. No feral pigeons, or any other birds, were observed at the time of the meeting. The objector describes a nuisance caused by 'pigeons', which could include wood pigeons and this species of bird is not the focus of the on-line research. The health expert could not conclude with any degree of certainty that the cause of the child's condition was due to bird droppings.
 - At the time of the two planning applications (15/P0870 & 15/P3112) the front garden was laid out as mainly open ground which had been partially surfaced with a loose covering of gravel and some concrete slabs. Any bird droppings that landed on the ground would have been washed away by rainfall. Both planning applications stated in the Design & Access Statement that there would be no changes to the existing landscape. When the objector purchased the property in November 2016, the entire front garden had been hard surfaced with concrete block paving (in excess of approx. 50 sq. metres). Under the BS 5837:2012 (Trees in relation to design, demolition and construction), it is recommended that new hard surfacing should not exceed 20% of any existing unsurfaced ground within the root protection area of a tree. In this regard, the amount of hard surfacing exceeds this recommended limit. Had this limit been applied, there would be more open ground beneath the tree and a proportionate reduction in the amount of bird droppings landing on the hard standing. This in turn would have reduced/removed the need for jet washing and the risk of damage to a car.
- 6.3 The objector was asked whether any deterrents had been tried. The tree officer was informed that enquiries had been made with a company about netting the whole tree or using a sonic device to repel birds. He was advised that these are temporary measures and that the birds would return to the tree. The tree officer suggested using other measures such as twirling shiny bird rods; head turning owl; flying falcon; silhouettes of a black cat; hanging CD discs and scary balloons. All of these suggestions were rejected by the objector as having a short lived usefulness. It was not apparent to the tree officer that any of these devices had actually been tried by the objector.
- 6.4 The objector informed the tree officer that should this tree preservation order be confirmed then he intends to take this matter to the High Court.

7. Officer Recommendations

- 7.1 The Merton (No.718) Tree Preservation Order 2017 should 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. No claim for compensation can be made for loss or damage occurred before an application for consent to undertake work on a protected tree was made, and the authority's liability is limited by legislation.

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

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