

Planning Applications Committee

19 JUNE 2019

Ward: Village

Subject: Tree Preservation Order (No.738) at 5 Highbury Road,
Wimbledon, SW19 7PR

Lead officer: HEAD OF SUSTAINABLE COMMUNITIES

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

Contact Officer Nick Hammick: 0208 545 3113
nick.hammick@merton.gov.uk

Recommendation:

That the Merton (No.738) Tree Preservation Order 2019 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 4th January 2019, the Council received a s.211 notification proposing the removal of 3no. trees from the front garden of the property; a Strawberry tree, Hawthorn and Silver birch. The reasons for the work was stated as: *“Strawberry tree to be removed as it is lifting and moving the front drive. As it continues to grow, this will continue to affect a larger area and may even reach the house. Hawthorn is lifting front drive and shifting the front wall pillar and lifting pavement. We have already had to take down one section of the front wall as it was becoming unstable and would have come down anyway. Silver birch is lifting the drive, potentially damaging existing foundations of main house and is at risk of falling. In particular, it is very close, about 13ft, from the front left hand corner, and we are concerned that the roots are affecting the foundations and that the tree could be unstable. The roots are already lifting the drive in the area, right up to the porch plinth adjoin the main house. As it continues to grow the roots are likely to cause further damage. Also, the structural engineer believes that the root structure of the Silver birch is likely to have been weakened when the house was built about 23 years ago and so is at risk of falling in high winds. It is his opinion that the tree should be removed to preserve the structural integrity of our house. We are worried as these trees are already causing damage to our property and this is only likely to get worse as time goes on. For these reasons we do not propose replacement trees, as they will cause the same issues.”*
- 2.2 The Tree Officer made a site visit with the objector on the 22nd January to assess the proposal and to explain the process the Council must follow in these matters. The Council’s letter of the 11th February raised no objection to the

removal of the Strawberry tree; being of average condition with some evidence of root severance being visible. The Council considered that the reasons made in support of the proposal to remove the Hawthorn and Silver birch would not appear to outweigh the loss of amenity that would result from their removal and the proposal could not be justified.

- 2.3 In line with the regulations, a Tree Preservation Order was made and is known as the Merton (No.738) Tree Preservation Order 2019 and this took effect on the 28th January 2019. A copy of the Tree Preservation Order plan is appended to this report.

3. Background

- 3.1 05/T2845 – Notification for Silver birch to be thinned and pruned back from building by 2 metres. Hawthorn to be pruned back from Strawberry tree.
- 3.2 15/T4224 - Notification to crown reduce Silver birch by 25% (3-4 metres off height, up to 2 metres off width).
- 3.3 18/P1366 - Single storey side & rear extensions. The submitted tree protection plan & tree schedule from the ATS Tree Survey, March 2018 identified the Hawthorn and Silver birch as being of 'satisfactory condition and contribute to the street scene'. Both specimens were attributed with 10-20 years estimated remaining contribution and classed as B-grade trees (ref; BS 5387 Trees in relation to construction – Recommendations 2005). The tree protection plan indicates that these trees were to be retained and depicts protective fencing and additional ground protection around them. It comments also on the adjacent driveway remaining as ground protection throughout demolition & construction process. The intention to retain these trees would appear to have been fully considered at this time.

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 9 reasons were given that include references to the visual amenity value of the tree in the area; that the trees have an intrinsic beauty; that the trees are visible to the public view; that the trees make an important contribution to the local landscape; that the trees form part of our collective heritage for present and future generations; that the trees are an integral part of the urban forest; that the trees contributes to the local bio-diversity; and that the trees protect 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 The owner of the trees at 5 Highbury Road objects to the Order on the grounds of:
- Repair and maintenance costs for blockages in and damage to drains. The submitted CCTV drainage survey report 25/2/19 observes that this is not the original underground drainage system; the implication being it may well be that the previous drainage was replaced as a consequence of root damage though this unknown. All drains surveyed with CCTV appear to have been installed relatively recently and are clean, clear and free-flowing. As there are roots at various levels in manhole 1, it is likely that roots will disturb underground drains in this area. Consideration should be given to rebuilding manhole 1 due to root intrusion.
 - Structural damage – Structural Engineers report 4/3/19; the front of the house has experienced minor cracks, probably associated with ground movements over and above the normal seasonal movement as a consequences of the tree roots. Concerns were expressed that retaining the trees may continue to pose a subsidence risk to the front left hand side of the property. Ideally the trees should be removed and replaced with younger specimens located slightly further away from the drains and front boundary.
 - Health and Safety – the trees have created large cracks to the public pavement. Structural Engineer notes that the objector might attract liability for damaging the public pavement.
 - Reduced mobility users of the pavements on Highbury Road – if the trees continue to expand the cracks, gaps and edges in the pavement, the trip hazards for elderly neighbours with reduced mobility will increase further.
 - Low light levels to the first floor bedroom – the submitted Arboricultural report 1/3/19 concludes the trees retention will result in unreasonable nuisance to the property owner. The excessive shading of the first floor bedroom cannot be mitigated without significant crown reductions to both trees.

6. Planning Considerations

- 6.1 The Tree Officer was shown manhole 1, which was open on the date of the site visit to the property. Consultation with Merton Building Control reported that the level of root ingress seen in reports into this manhole was slight, certainly not significant and might easily be treated through their removal e.g severance/pressure washing. Officers commented, in their experience, it was highly unlikely that there would be the need to consider rebuilding this chamber due to this limited degree small diameter root ingress.
- 6.2 Structural damage, whilst having been mentioned, along with many caveats to the advice submitted, has not been assessed in any real terms. The Council would require the results/data from various “industry-standard” tests, so that an informed decision could be reached; the level and location of any structural damage to be properly quantified, the results of various & appropriate soil tests, positive (live) root identification retrieved from trial pit/s which reveal foundation depth and crack/level monitoring over a period of time to indicate patterns of seasonal movement. Without this evidence, little weight can be given to the assessment of minor cracking, ground movement or the role of tree roots and the proposal to remove either tree, at this stage, would not be a proportionate response. The submitted Chartered Surveyors specific defect report 5/3/19 notes they formed the opinion that slight ground movement had occurred, but

that this was not of an ongoing concern. Structural Engineers note that cracking of external walls should be properly repaired; references to two companies that regularly repair them are provided.

- 6.3 The comments raised in relation to health and safety and reduced mobility of pavement users are noted. Consultation with Merton's Principal Highway Officer reports "Highbury Road has an annual inspection and while defects have been identified no defect has been identified outside no. 5 Highbury Road. Trained Inspectors work to the broad practices of the Code of Practice for Well Maintained Highways. The crack in the surface of the footway has been evident for many years and to date has not met our criterion for repair. Many such footways within Merton have radial cracks such as this one and when any of these reach our level of repair criterion, they will be appropriately marked for our contractor to repair.
- 6.4 The Arboricultural Consultancy report 1/3/19 states it is likely there will be a requirement for cyclical pruning in the future to avoid nuisance associated with dropped leaves, seeds and branches onto the neighbouring driveway as well as direct conflict with the objector's house. Applications for tree pruning can be made to the Council as required and will be determined on the merits of the proposal. However, the 'avoiding of nuisance' as described is not considered to be reason enough for requiring the removal of a protected tree, or be strictly relevant for the purposes of confirming the Tree Preservation Order.

7. Officer Recommendations

- 7.1 The Merton (No.738) Tree Preservation Order 2019 should be confirmed without modification.

8. Consultation undertaken or proposed

Principal Highways Officer (Merton) & Building Control (Merton).

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.738) Tree Preservation Order 2019
Government Planning Practice Guidance on Tree Preservation Orders and trees in Conservation Areas.