

Committee: Planning Applications Committee

Date: 16 January 2014

Agenda item:

Ward: Hillside

Subject: TREE PRESERVATION ORDER (NO.646) AT 10 HILLSIDE, WEST WIMBLEDON, LONDON, SW19 4NH.

Lead officer: HEAD OF PUBLIC PROTECTION AND DEVELOPMENT

Lead member: COUNCILLOR PHILIP JONES, CHAIR, PLANNING APPLICATIONS COMMITTEE

Contact officer: Rose Stepanek

Recommendations:

- A. The Merton (No 646) Tree Preservation Order 2013 be confirmed, without modification.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. This report considers the objection that has been made to the making of this tree preservation order. The Committee must take the objection into account before deciding whether to confirm the Order, with the recommended modification, or to allow the removal of the tree based on the concerns raised by the objector. The report was deferred from the December Committee as additional legal advice was being sought.

2 DETAILS

- 2.1 This Tree Preservation Order has been served as a result of the submission of a 6 weeks notice of an intention to remove a Holm Oak tree located in the West Wimbledon Conservation Area. That proposal was registered as 13/T2114.
- 2.2 The Holm Oak tree is a large mature specimen which is readily observed along Hillside. The tree is located in the front garden to 10 Hillside. To the left hand side of the tree is an existing boundary wall with the neighbouring property, no. 9 Hillside. The tree is located very close to a short section of the existing front boundary wall belonging to 10 Hillside. As this is an evergreen species of tree, its presence makes a very noticeable and enduring contribution to the visual amenities of the locality. The tree is a significant specimen and provides a very important source of greenery in this part of Wimbledon.
- 2.3 The Merton (No.646) Tree Preservation Order 2013 took effect on the 15 July 2013. A copy of the plan identifying the location of the Holm Oak tree is appended to this report.

3 RELEVANT HISTORY

- 3.1. Historically, it would appear that the Holm Oak tree was originally planted in a raised planting bed. Over time, the wall to the bed has been removed and

much of the original soil has been removed or has washed away with the passage of time. This has resulted in the base of the tree being positioned above the surrounding ground level and the buttress roots and some of the root system is exposed to the elements. This in itself does not suggest the tree is unstable as the root system is widespread and has most probably adapted to the changing circumstances in its rooting habitat.

3.2. In 2007, a planning application (ref: 07/P1100) was submitted for the following works:

‘Erection of two new single storey rear extensions. New boundary wall and gates. Installation of two new windows and doors at ground floor of existing house and renewal of previous permission for a new crossover (ref: 01/P0090). ‘

Planning consent was subsequently granted, and the Holm tree was shown as retained on the approved layout plan. No planning conditions were attached requiring any further special provisions to be made for this tree.

3.2 Since 2007, all of the work has been completed with the exception of the front boundary wall. The householder is now in a position to complete that planning consent. However, the tree is now considered to be an obstacle to the completion of that consent.

3.3 Following the submission of the 6 weeks notice to remove the Holm Oak tree, the agent was made aware that the Council had concerns over the proposed loss of the tree and did subsequently withdraw the tree works application.

3.4 By this time, the tree preservation order had already taken effect. Any objections to the Order were to be received in writing by the 26 August 2013.

3.5 Following on from this, the Council received an objection to the Order within the specified time limit from an arboricultural expert, and further representations from a planning agent after the specified deadline for the receipt of objections/representations. Both are acting on behalf of the landowners. The objection is summarised below.

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 clearly 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.

- 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 14 January 2014.

5 OBJECTION TO THE ORDER

- 5.1. The arboricultural expert objects to the Order for the following reasons:
- (1) The tree has a lean towards the highway, and the continued expansion of the trunk has caused movement to the front boundary wall and to the wall that divides the boundary between nos. 9 & 10 Hillside;
 - (2) The new wall cannot be built according to the approved plans without the removal of the Holm Oak tree;
 - (3) That the making of the Order is unsound because the planning consent (07/P1100) takes precedence over the retention of the tree.
- 5.2. The planning agent has repeated those concerns, and has further threatened to seek to recover legal costs of any formal proceedings over the delay caused to his client to complete the approved development by the intervention of the tree preservation order. In addition the applicant has provided their own legal advice on the matter setting out why they consider the notice should not be confirmed. The Council's legal section has been asked to comment on this matter, however, have not yet managed to respond although have stated they will do so before the date of Committee.

6 PLANNING CONSIDERATIONS

- 6.1. Members should take into account the advice set out in paragraph 4.1 of this report and to bear in mind that the essential purpose of a tree preservation order is to protect the public amenity.
- 6.2. The Tree Officer would respond to each objection in respective order, as follows:
- a) The tree is causing the walls to tilt and is undermining the existing foundations. The trunk of the tree has a slight lean to wards the front boundary wall. The base of the tree has grown to envelope an existing concrete lintel, and the trunk is very close to the wall;
 - b) It is possible for the wall to be built as per the approved plans, but without a special site specific engineered solution, the new wall is likely to be damaged again. However, with the right approach a solution can be found. As this is a short section of wall, there are other materials and methods that could be utilized to design around the tree. The planning agent and landowner have both been advised that this could be done as a non-material amendment. To date, no further communications have been received ;
 - c) The interpretation of planning law is incorrect. It is the case that a planning consent can over-ride a tree preservation order that is already in existence, but not the case where a tree preservation order is issued

after the planning consent has been granted. In this particular case, the applicant has clearly shown the tree is to be retained on the approved layout plan, and this tree preservation order is not a case of thwarting an existing consent.

- 6.3 Under planning consent 07/P1100, planning condition (2) required the following to be submitted for written approval:

‘Notwithstanding any materials specified in the application form and/or approved drawings, particulars and samples of the materials to be used for the proposed boundary wall shall be submitted to and approved in writing by the Local Planning Authority before any works are commenced. The development shall be carried out in full accordance with approved details.’

Samples of the type of brick to be used were submitted to the Council on 14 August 2013 (ref: 13/P2581), and were discharged on the 4 November 2013.

- 6.4 As the letter from the planning agent was received on the 21 October 2013, it is difficult to understand how the consideration of the objections to the tree preservation order were in any way impeding the completion of the development, when the matter of satisfying planning condition (2) was still under consideration of the planning officer and was awaiting written approval by the Local Planning Authority.

6 OFFICER RECOMMENDATIONS

- 6.1. The Merton (No.646) Tree Preservation Order 2013 should be confirmed, without modification.

7 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 7.1. The property owners may challenge the Order 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.

8 LEGAL AND STATUTORY IMPLICATIONS

- 8.1. 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 will have to be in the High Court.

9 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 10.1. N/A

10 CRIME AND DISORDER IMPLICATIONS

- 11.1 N/A

11 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 11.1. N/A

12 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Tree preservation Order plan

13 BACKGROUND PAPERS

- 13.1. The file on the Merton (No 646) Tree Preservation Order 2013
Tree Preservation Orders – A Guide to the Law and Good Practice



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Merton (No.646) Tree Preservation Order 2013

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Page 212

Date 18/7/2013

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