

Committee: Planning Applications Committee

Date: 17th October 2019

Wards: Wimbledon Park

**Subject: Tree Preservation Order (No.742) at The Lodge & Vine House,
1C Vineyard Hill Road, SW19.**

Lead officer: HEAD OF SUSTAINABLE COMMUNITIES

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

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Recommendation:

That the Merton (No.742) Tree Preservation Order 2019 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 consider the objection before deciding whether or not to confirm the Order, with/without modification.

2. Planning History

- 2.1 In February 1951 planning permission was granted for the conversion of existing buildings into three houses (Ref. WIM 839).
- 2.2 In July 1998 planning permission was granted for the erection of a two-storey side extension and single storey rear extension (LBM Ref. 98/P0127).
- 2.3 In July 2002 planning permission was granted for the erection of a two-storey side extension and single storey rear extension (LBM Ref.02/P0780).
- 2.4 In June 2010 planning permission and conservation area consent was granted by the Planning Applications Committee subject to completion of a S.106 Agreement for the erection of side and rear extensions to existing dwelling and erection of a new semi-detached dwelling (LBM Refs. 10/P0371 and 10/P0372).
- 2.5 In April 2010 planning permission and conservation area consent was refused under delegated powers for the demolition of the existing house and garage and the erection of a four bedroom detached dwelling (LBM Ref. 10/P1003 and 10/P1005). Planning permission was refused on the grounds that: the proposed house was out of character (contemporary design), be visually intrusive detrimental to neighbour amenity and the proposal would involve the demolition of a building identified as making a positive contribution to the Merton (Vineyard Hill Road) Conservation Area and contrary to Policies BE.1, BE.2, BE.15 and BE.22 of the Adopted UDP..
- 2.6 In August 2010 planning consent and conservation area consent was granted for the demolition of the existing garage and for the erection of a two storey side extension, a section of front wall, the erection of a new single and two storey rear and side extension, roof extension and basement extension. The impact on

the surrounding trees was considered at the time and the Tree Officer found the submitted tree report and its tree protection measures to be acceptable. Specific attention was paid to reducing the size of basement, taking it out of the root protection area (RPA) of the neighbouring large mature Holm Oak tree. The tree report set out a specific foundation design (Housedeck system) to protect the roots of the same Holm Oak tree and to guard against any risk of future structural damage to the new side extension (LBM Ref.10/P1667 and 10/P2404).

- 2.6 In October 2013 planning approval was granted for the discharge of several planning conditions relating to LBM Ref. 10/P1667. This included planning condition 8, which required details relating to the 'Housedeck' system. The engineer considered the 'Housedeck' system to be 'unnecessary' and that a standard strip foundation to a depth of approximately 1.8 metres would be sufficient for the approved side extension.
- 2.7 In June 2019, two tree work applications (s.211 notice) were submitted for the proposed removal of the neighbouring Holm Oak tree at Vine House, and for the proposed removal of 4 pollarded Lime trees located adjacent to the front wall of The Lodge. It was claimed that the tree work was necessary to alleviate a claim of subsidence damage to the side extension built under LBM Ref. 10/P1667. Their investigations of the depth of the foundations found them to be approximately 1.7 metres deep.
- 2.8 In July 2019, both tree work applications were refused planning consent and a tree preservation order was made to protect all 5 trees. This is known as the Merton (No.742) Tree Preservation Order 2019, and copy of the 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 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 trees to the area; that the trees have an intrinsic beauty; their significant to the character and appearance to the local area; 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.
- 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 The Council has received an objection to the Order from the insurance company.

4.2 The objection has been summarised as follows:

- That current Government advice is that Local Planning Authorities should take into account the amenity value of a tree, and when ‘..assessing amenity value, what ‘expedient’ means in practice.’, and;
- If this Council used a valuation system such as TEMPO, it would have been found that ‘...if a neighbouring tree’s roots have been identified within the investigations then that tree would score nought under the TEMPO system, which would preclude any served Order including the neighbour’s tree. In this case the Holm Oak’.

5. Planning Considerations

5.1 The Tree Officer would respond to each of the objector’s respective points as follows:

- Local Planning Authorities are advised to exercise judgment when determining whether a tree has amenity value. The current Government advice is to take into account the following criteria:
 - Visibility: Trees, or at least a part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public;
 - Individual, collective and wider impact: Further points to consider include characteristics such as; size and form; future potential as an amenity; rarity, cultural or historic value; contribution to, and relationship with, the landscape, and; contribution to the character or appearance of a conservation area;
 - Other factors: Such as importance to nature conservation or response to climate change. These factors alone would not warrant making an Order.

These factors were taken into account and are referred to above as reasons for making the Order. When considering the matter of ‘expedience’ Authorities can make an Order if they believe there is a risk of trees being felled which would have a significant impact on the amenity of an area. This would be the normal response to a s.211 notice if the Local Planning Authority disagrees with the proposed tree work and the proposed loss of trees at a property.

- The TEMPO method of evaluating trees was developed by a private arboricultural expert. There is no requirement for Authorities to adopt this particular method. The current Government guidance is that ‘...authorities are advised to develop ways of assessing the amenity value of trees in a structured and consistent way, taking into account the following criteria...’ these are explained above.
- All 5 trees are clearly visible to the public and they provide a significant level of amenity value to the public and to the character and appearance of the conservation area.
- One of our Building Control Inspectors advised this officer that according to the National House Building Standards and Local Authority Building Control advice in such matters, the correct foundation depth for this

particular side extension positioned approximately 6 metres from the Holm Oak tree should be **in excess** of 2.5 metres and a full structural foundation design is required. Clearly, the foundations that have been constructed in this case do not satisfy the required standards, and it is entirely wrong to blame the trees for the current structural damage to the property.

6. Officer Recommendations

- 6.1 The Merton (No.742) Tree Preservation Order 2019 should be confirmed without modification.

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.742) Tree Preservation Order 2019
Government Planning Practice Guidance on Tree Preservation Orders and trees in conservation areas.