

Committee: Planning Applications Committee

Date: 16th June 2022

Agenda item:

Wards: Wimbledon Park

Subject: Objection to the Merton (No.772) Tree Preservation Order 2022 at 1 Weir Road, SW19 8UG.

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Recommendation:

That the Merton (No.772) Tree Preservation Order 2022 be confirmed but be modified by removing T1 (Elder) from the Order.

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 April 2021, a planning application was submitted for the 'Refurbishment of existing retail unit (class E) comprising installation of new shopfront and customer entrance exit lobby; rear extension; reconfigured site layout including new parking arrangements; and associated works.' This case (planning reference 21/P1436) was determined at officer level and was granted permission subject to conditions. Planning condition 5 requires the submission of a landscaping and planting scheme.
- 2.2 The officer's delegated report noted that an assessment of the trees had been undertaken by Landmark Trees. The officer also noted that the applicant proposed to keep all trees on site alongside measures to enhance the existing trees. The proposal was considered to be in keeping with policy DM02. Policy DM02 specifically notes that development may only be permitted if it will not damage or destroy any tree which is protected by a tree preservation order or has significant amenity value.

- 2.3 On the 21.9.21, an application to discharge planning condition 5 (reference 21/P3407) was submitted proposing the removal of all the existing vegetation and trees on the basis of an ecological report by Middlemarch Environmental. That survey identified 4 species of invasive non-native plants listed under the London Invasive Species Initiative – Cherry Laurel, Tree of Heaven, False Acacia and the Butterfly Bush. All are considered to be a species of high impact or concern that are widespread in London and require extensive action to control/eradicate. Officers accepted the expert's advice and advised the applicant to amend the proposed landscape plan to retain 7 specified trees and to permit the removal of the existing shrubs and ground cover. The applicant responded by providing an amended plan showing 3 retained trees (Horse Chestnut, Dawn Redwood and Elder) and 4 new trees. The plan was annotated against the existing trees to be ‘..retained and crown lifted to give 6.0m clearance if possible.’ In effect, this would result in the removal of most, if not all, the branches on the trees. On officer's advice, the applicant then added the existing Hornbeam to the plan but stated an intention to crown lift this tree and the Elder to provide 5.0m clearance. The applicant was duly advised that this was excessive tree work, and that the Council would only agree to pruning back branches back from the footpath to the boundary. In view of all of these negotiations, a decision was taken to protect the 4 trees agreed for retention with a tree preservation order. On the 1 March 2022, the Merton (No.772) Tree Preservation Order 2022 took effect. The Order protects a Horse Chestnut tree, Dawn Redwood, Hornbeam and the Elder tree. The plan is appended to this report.
- 2.4 Planning application 21/P3407 was approved on the 2 March 2022. The approved landscape plan shows the 4 retained existing trees and 5 new trees as part of the soft landscaping arrangement to the site.

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 8 reasons were given that include references to the visual amenity value of the trees to the area; that the trees have an intrinsic beauty; the trees make a significant contribution to the character and appearance to the local area; that the trees were to be retained under planning ref: 21/P1436; 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 tree contributes to the local bio-diversity; and protects 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 agent acting on behalf of the landowner of 1 Weir Road.

4.2 The objection has been summarised as follows:

- That the landowner does not wish to remove the trees and is obligated to retain them under the planning consent. Notwithstanding that, it is the opinion of the agent that the removal of these trees would not have a significant impact on the locality as there are other trees in the locality and that the planting of 5 new trees adds to the visual amenity of the street scene. Further elements were assessed including:
 - The canopies overhang the site boundary and public footway
 - The trees are non-native
 - The trees are located in a built-up urban area and have no relationship with the surrounding landscape and make a limited arboricultural contribution
 - The trees are not in a conservation area.
- There is no risk of the trees being felled or damaged in ways which would have a significant impact on the area because the planning permission granted includes the retention of the trees and the careful pruning to remove lower branches that are overhanging the site boundary and public footpath. The trees would be under good arboricultural management and would be included in maintenance operations. The new store intends to operate for many years and therefore the Council can rest assured that there is no threat to the existing trees from a change of ownership or the lack of knowledge over the intention to retain the existing trees on the site, which deems the TPO unnecessary.
- There is evidence of deadwood in the crowns and therefore this indicates the trees are in decline.

5. Planning Considerations

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

- There are no specific planning conditions attached to the planning consent requiring the retention of any existing trees. The tree survey by Landmark Trees applied a 'B' category rating to the Horse Chestnut, Dawn Redwood and Horse Chestnut. The Elder was not identified in the survey, and therefore has not been given a category. The categorisation of existing trees on a site is a method for tree quality assessment developed for the BS 5837:2012 – Trees in relation to design, demolition and construction, recommendations, and this is an accepted arboricultural industry standard. Category 'B' defines trees of a moderate value with an estimated remaining life expectancy of at least 20 years. Categories 'A' and 'B' are the most desirable trees to retain as part of a development and this accords with the aims of policy DM02.

- Officers have agreed to the pruning back of overhanging branches. This is a minor amount of work that would not impact on the overall aesthetics of the shape and form of the trees.
 - The BS 5837:2012 and the tree preservation order do not distinguish between native and non-native species of tree. Both are mainly concerned with the retention of trees of a visual amenity value, although other factors such as historical, commemorative or a veteran tree can be of additional importance. Nature conservation value can be included in the consideration of a tree preservation order, but this factor alone would not warrant an Order.
 - These trees are located in a built-up area of mixed commercial and residential usage. They are established trees that provide an important source of visual amenity to residents and visitors alike.
 - It is irrelevant whether this is a conservation area or not. These trees are important within the context of their surroundings and the visual amenity they provide to the public.
- A site visit was carried out on the 18 May 2022 by the tree officer in preparation for this report. It was found that the Elder tree listed as T1 in the Order has been cut down to a stump. As this tree has been destroyed, it is proposed that this should be removed from the Order. The other trees are good examples of their species, and a tree preservation order is the only way of ensuring the remaining trees are retained and kept under good arboricultural management. The Order shall then remain in place for the duration of the lifespan of those trees, and any replacements, regardless of whether there is any change of ownership.
 - The Tree Survey noted the presence of minor static deadwood in the Dawn Redwood. The production of deadwood is a normal biological process in trees. However, when the amount of deadwood in the canopy of the tree becomes excessive, then this is usually an indicator that a tree is in decline. This is not the case with the Dawn Redwood as this is an early mature tree showing normal growth vitality.

6. Officer Recommendations

- 6.1 The Merton (No.772) Tree Preservation Order 2022 should be confirmed but be modified to removed T1 (Elder) from the Order.

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.772) Tree Preservation Order 2022
Government Planning Practice Guidance on Tree Preservation Orders and trees in conservation areas.

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