

Committee: Planning Applications Committee

Date: 16th June 2022

Agenda item:

Wards: Village

Subject: Objection to the Merton (No.777) Tree Preservation Order 2022 at 5 Parkside Avenue, Wimbledon, SW19 5ES.

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Recommendation:

That the Merton (No.777) Tree Preservation Order 2022 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 objections before deciding whether or not to confirm the Order, with/without modification.

2. Planning History

- 2.1 This report relates to no.5 Parkside Avenue, Wimbledon, SW19 5ES. The property is located in the Wimbledon North Conservation Area. This property is one of several that are included in the Merton (No.18) Tree Preservation Order 1978. The protection takes the form of area protection and would only relate to trees that existed in 1978 and any replacement trees planted thereafter.
- 2.2 In August 2020, a planning application was submitted for the 'Demolition of 2 storey dwelling house and erection of replacement dwelling house with accomodation within the roof space' This case (planning reference 20/P2610) was determined by members of the Planning Applications Committee meeting held on the 10 December 2020. The officer's report advised members that objections had been received from 5 neighbouring properties, the Wimbledon Society and the Parkside Residents Association. All of the objectors raised concerns with regards to the loss of a large quantity of trees and that the proposed landscaping did not mitigate sufficiently against the loss of those

trees. One neighbouring objector commissioned their own arboricultural report wherein it is noted that the proposed scheme did not mitigate against the loss of the existing trees. The submitted landscaping plan shows 12 no. Field Maple trees along the frontage of the site and 2 species of Crab Apple to the rear of the site, although the quantity and locations of these trees had not been marked on the plan. Members resolved that the planning application should be granted planning permission subject to conditions. Condition 2 requires the development to be carried out in accordance with specifically approved plans, including the submitted landscape plan. Conditions 9 & 12 relate to the protection of the existing retained trees, and conditions 10 & 11 relate to the submission of a landscaping and planting scheme.

- 2.3 On the 11 January 2021, an application for approval of details reserved by condition was submitted seeking to discharge 4 conditions (planning reference 21/P0263), including condition 10 relating to the landscape and planting scheme. The proposed landscape plan showed the existing retained trees and 18no. Field Maple trees and 3 no. Crab Apple trees to the front of the site and a further 4no. Crab Apple trees to the rear of the site. This was found to be acceptable and was approved on the 8 March 2021.
- 2.4 On the 2 March 2022, a tree works application (s.211 notice) was submitted seeking consent to remove all of the existing retained trees in the rear garden. The applicant gave no reason(s) for this work. The trees were shown on a landscape plan that differed from the approved landscape plan and this shows a complete re-design to the front and rear gardens. New trees were also shown on the plan, however, the quantity of Field Maple trees to the frontage had been reduced from the approved 18 to 11 trees. The existing trees in the rear garden, in all probability, postdate 1978 and were not, therefore, protected by the existing old tree preservation order. This meant that only the regulations concerning conservation areas applied to those trees. As such, the local planning authority must determine the matter within 6 weeks otherwise the applicant could go ahead and remove the trees. Given the history of this site, the tree officer concluded that not only should the existing trees be protected, but that this should extend to include the trees to be planted under planning reference 21/P0263. On the 7 April 2022, the Merton (No.777) Tree Preservation Order 2022 took effect in the form of an area protection of the entire property. The Regulation 5 Notice that sets out the reasons for the Order, makes it clear that this relates to the existing and new trees. 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 10 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: 20/P2610; 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. Objections to the Order

- 4.1 The Council has received 2 objections to the Order. One from the agent and the second objection is from the landowner.

- 4.2 The objection from the agent has been summarised as follows:

- That not all of the trees are worthy of protection and the Beech tree marked as T9 is singled out as being in poor condition and is recommended for removal in the tree survey approved under 20/P2610. The majority of these trees are of low quality and value with limited public amenity.
- The new trees to be planted as part of the recent planning permission will be young and take a number of years to develop and grow.
- As the property is in a conservation area, all of the trees are protected.
- Refers to Planning Policy Guidance whereby the tree officer should visit the site and consider whether the Order is justified. That the officer should gather enough information to enable an accurate Order to be drawn up. The agent questions whether this was the case or whether the tree officer relied on the recent planning application.
- Notes the law with regards to making objections/representations, and that they should be made in writing and within the specified date.

The owner raised the following objection:

- Objects to not being permitted to tweak their originally approved landscape plans.

5. Planning Considerations

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

- The trees are required to be retained as part of the planning consent. The Beech tree marked T9 in the tree survey is described as being in a fair condition and has a lifespan of less than 10 years. The tree straddles the boundary with another property. Whilst the tree expert recommended this tree for removal, it has, nevertheless, been shown as retained on the approved Tree Protection Plan. A tree works application could be submitted proposing its removal, and with the tree preservation order in place a replacement tree could be secured. The majority of the retained trees are classed as 'C' category trees. However, this does not prevent such trees of low quality being protected particularly in view of the

objections that were made in response to planning reference 20/P2610. Furthermore, local planning authorities have a duty to make Orders where it appears to be necessary in connection with the grant of planning permission.

- The approved Field Maples shall be semi-mature and be between 5.75 and 6 metres in height. The Crab Apple trees shall be between 3 and 4 metres in height. Regardless of their size at the time of planting, a tree preservation order would ensure they are retained and replaced as necessary.
- As outlined above, the protection is limited to 6 weeks if an application is made proposing the removal of a tree.
- The tree officer did rely on the approved tree survey and landscape plan to determine what form the tree preservation order should take. As the development is currently under construction and given the shortness of time to respond to a s.211 notification, it was considered that the area category should be used as a temporary measure to protect the existing and proposed trees until such time as they are all in place and can then be fully assessed and reclassified.
- Noted.
- A tree works application is not the correct method of proposing amendments to an extant landscaping condition. The agent who submitted the s.211 notice was informed of this. Any proposals for changes should be submitted in the form of a planning application to amend the approved plan.

6. Officer Recommendations

- 6.1 The Merton (No.777) Tree Preservation Order 2022 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.777) Tree Preservation Order 2022
Government Planning Practice Guidance on Tree Preservation Orders and trees in conservation areas.

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